



Arlington Conservation Commission

Date: Thursday, September 3, 2020
Time: 7:30 PM
Location: Conducted by Remote Participation

Agenda

1. Administrative

- a. In accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency, the September 3, 2020 public meeting of the Arlington Conservation Commission shall be physically closed to the public to avoid group congregation. The meeting shall instead be held virtually using Zoom.

Topic: Conservation Commission Meeting

Time: September 3, 2020 07:30 PM Eastern Time (US and Canada)

Join Zoom Meeting

<https://town-arlington-ma-us.zoom.us/j/91270261660>

Meeting ID: 912 7026 1660

Password: 386758

Call-in: +1 646 876 9923

+1 301 715 8592

Meeting number: 912 7026 1660#

Members of the public are strongly encouraged to send written comment regarding any of the hearings listed below to Conservation Agent Emily Sullivan at esullivan@town.arlington.ma.us.

Please read Governor Baker's Executive Order Suspending Certain Provision of Open Meeting Law for more information regarding virtual public hearings and meetings: <https://www.mass.gov/doc/open-meeting-law-order-march-12-2020/download>

- b. Interview candidates interested in the open Commission membership, including Douglas Kilgour and Mike Gildesgame.
- c. Review the roles and responsibilities of the Commission Chair and Vice Chair
- d. Community Preservation Act Update
- e. Zoning Board of Appeals Update

2. Discussion

- a. Regulations Update: Section 33 Stormwater Management

3. Hearings

Request for Extension of Order of Conditions

Request for Extension of Order of Conditions: 88 Coolidge Road

MassDEP File #091-0278

The project as approved proposed to construct a single family home in the 100-ft wetlands buffer and AURA of an isolated wetland. The project was approved on 10/05/2017.

Request for Determination of Applicability

Request for Determination of Applicability: 1165R Massachusetts Avenue

This RDA requests that the Commission review the jurisdiction of various resource areas within the boundaries of 1165R Mass Ave. The following three reviews are requested:

- 1) Review the Riverfront area to determine if the property contains a Historic Mill Complex as defined under the Massachusetts Wetlands Protection Act (WPA) Regulations 310 CMR 10.04.
- 2) Review the Historic Mill Complex exemption request under the Riverfront regulations in accordance with 310 CMR 10.58(6)(k).
- 3) Review the existing drainage ditch, known locally as Ryder Brook, and determine if it meets the definition of "stream" according to 310 CMR 10.04.



Town of Arlington, Massachusetts

Chair/Vice Chair Draft Roles

Summary:

Review the roles and responsibilities of the Commission Chair and Vice Chair

ATTACHMENTS:

| | Type | File Name | Description |
|---|-----------------------|------------------------------------------------|------------------------------|
| ▢ | Reference Material | DRAFT_Chair_Vice-Chair_Roles- 14AUG2020.pdf | Chair/Vice Chair Draft Roles |

DRAFT

Arlington Conservation Commission
Chair & Vice-Chair Roles / Responsibilities

Primary Roles:

The Chair's primary role is to ensure the proceedings of the ACC are in compliance with the MassDEP Wetlands Protection Act (WPA) and Town Bylaw / Town Wetland Regulations, as well as to supervise the Conservation Agent.

The Vice-Chair's primary role is to support the Chair in the administration of ACC meetings and proceedings and to serve in the Chair's absence when needed as directed by the Chair.

| Function / Role | Chair | Vice-Chair |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|-------------------|
| General Administration | | |
| Direct Supervision of Conservation Agent | X | |
| Ensure ACC proceedings in compliance with WPA, Town Bylaw, and Open Meeting Law | X | |
| Lead process improvements with Agent | X | |
| Responsible for oversight and accountability of funds (annual budget/w Agent) | X | |
| Call for Special Meetings | X | |
| Form sub/ ad hoc committees, assign tasks and duties, appoint members | X | |
| Identify training / educational opportunities for Commissioners with Agent | X | |
| ACC Meetings | | |
| Finalize ACC Meeting Agenda with Agent | X | Support* |
| Primary responsibility for chairing / running ACC Meetings | X | Support* |
| Chair and Vice Chair preside over permit hearings, as delegated by Chair | X | X |
| Co-Host virtual Zoom meetings | X | X |
| Monitor virtual meetings: admit late attendees; monitor waiting room; move disruptive participants to waiting room; lock down meeting if needed | | X |
| Call for Commissioners to make Motions & Vote on Agenda Items / Hearings | X | Support* |
| Meeting Minutes – review drafts | X | X |
| Site Visits | | |
| Most site visits will be conducted by the ACC Agent; complex sites and site violations should have representation from the Chair and/or Vice-Chair (as well as other Commissioners) | X | X |
| Site visit notes – prepare and/or review drafts | X | Support* |
| ACC Wetland Regulations | | |
| Lead ACC for Town Wetland Regulations Revisions | X | Support* |
| Public Outreach | | |
| Lead Public presentations outreach with ACC Agent to advance Wetland Protection (MACC; other meetings – all Commissioners may participate) | X | Support* |
| Assist ACC Agent with Educational materials | X | X |
| Represent the Commission at public meetings before Town Boards, or as delegated by Chair | X | Support* |

*Supporting role and take lead when Chair is unavailable, at direction of Chair



Town of Arlington, Massachusetts

Community Preservation Act Update

Summary:

Community Preservation Act Update

ATTACHMENTS:

| | Type | File Name | Description |
|---|-----------------------|---------------------------------|-------------------|
| ▢ | Reference Material | P_Heidell_CPA_Projects_Memo.pdf | CPA Projects Memo |

MEMO

TO: Conservation Commission
FROM: Pam Heidell
SUBJECT: Water Management Studies/Aquatic Invasive Species Projects Funded under the Community Preservation Act
DATE: February 13, 2020

The Community Preservation Act funds projects in four asset categories: Open Space¹ is one of these, and allowable projects include, but are not limited to, the acquisition, creation and **preservation of open space**. Below please see a list of projects in 50 communities that have used CPA funds for Pond and Lake Management Plans, water quality investigations, water quality improvements, and aquatic vegetation management.² The list is intended to be instructive as we consider how a Mystic Lakes Management Plan may be funded and developed, as well as aquatic invasive species management.

Abington

Island Grove Pond Study. Study to determine the type of invasive plant species growing in the island Grove Pond, and to determine the method and cost of removing the plants. (2019)

Acton

Ice House Pond and Robbins Mill Pond - Water Chestnut Removal. Funding has been made to fund a three-year water chestnut removal program. The preservation project will be conducted by a licensed environmental company using mechanical harvesting. (2015)

Ashland

Lake Waushakum Pollution Prevention and Algae Control Implementation. Study to install a hydrodynamic separator at outfall, to reduce pollutants entering the lake, and apply alum treatment for weed and algae control. (2008)

CPA definition: "Open Space," shall include, but not be limited to, land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vista, lands for wildlife or nature preserve and land for recreational use.

²The list is derived from the Community Preservation Coalition database of projects. In addition to the projects listed here, many communities have used CPA funds for management of invasive on conservation lands. Typically, projects were funded under the Open Space category, but some were also funded under Recreation¹¹. The Coalition database contains a note that the data base is self-reported by CPA communities and that allowable use determinations are made locally and the Preservation Coalition does not monitor or verify project information for accuracy or compliance with CPA.

Lake Waushakum Pollution Prevention Design and Grant Application. Hire a consultant to provide preliminary designs and apply for S.319 grants to implement pollution prevention and algae control solutions recommended by DEP . (2008)

Study of Lake Waushakum. Environmental and engineering study of Lake Waushakum (2006).

Ayer

Invasive Vegetation control/study. CPA funds for a comprehensive survey and biological assessments of Ayer Ponds (Sandy, Long, Flanagan, Grove, Pine Meadow and Balch) with recommendations for long term management. (2014)

Invasive Vegetation control/study. To fund treatment and a study of dams and ponds. (2011)

Becket

Center Lake Weed Control Project. Funding for removal of invasive weeds. (2010)

Bedford:

Fawn Lake Permitting and Design. For permitting/design work for Fawn Lake to address aquatic vegetation and possible dam replacement. (2016)

Fawn Lake. Additional funding for preservation of Fawn Lake, clearing weeds, etc. to keep habitat healthy. (2004)

Fawn Lake: For many years, Fawn Lake has been filling with decaying plant matter. To address this, funding for a program of hydro raking, spot herbicide application and other steps. (2003)

Belchertown

Presevation and rehabilitation of the Tri-Lakes by establishing and funding a water quality program. (2017)

Tri-Lakes Watershed Protection. Water Quality Baseline Analysis on Lakes Arcadia, Holland and Metacomet. (2008)

Chelmsford

Freeman Lake Vegetation Project. Survey to improve quality of lake. (2017)

Invasive Weed Removal at Heart Pond. Removal and treatment of invasive weeds, including Fanwort and Curly Leafed Pondweed at Heart Pond. (2011)

Concord

Warners Pond Watershed Management Plan. Completion of Watershed Management Plan for Warners Pond which would assist Town in preserving the area and provide guidance for future projects. (2010)

Warners Pond Dredging Project (2019)

Dracut

Long Pond Aquatic Weed Control. Stabilize weed control program to preserve portion of Long Pond. (2013)

Dunstable

Lake Massapoag. Preservation of Lake Massapaog through removal of invasive weed species . (2018)33

Eastham

Herring Pond Treatment. Treatment of Herring Pond for reducing the effects of phosphorous. (2012)

Preserve Minister/School House Ponds. The grant requested by the Water Management Committee would be to restore water quality in the ponds. (2019)

Easthampton

Nashawannuck Pond Dredging. To dredge Pond and clear of weeds and invasive species. (2005)

Nashawannuck Pond dredging. Additional funds for dredging and preservation of Nashawannuck pond restoring habitat and water quality. (2007)

Falmouth

Oyster Pond Invasive plant species removal. CPA funds will contribute to the costs associated with halting and reversing the spread of phragmites to preserve habitat for native species. (2009)

Oyster Pond Invasive Plant Removal Project - Phase 2. To continue the removal of phragmites from Oyster Pond and the water body south of it. (2012)

Upper Childs River and Farley Bog Reservation. Many facets to the project, including the removal of invasive plant species. (2018)

Georgetown

Pentucket and Rock Ponds Invasives Prevention. Funds from appropriation of 5,000 unspent after a period of three years from the date of approval of this article will be returned to the Community Preservation fund..(2010)

Pentucket Pond fanwort treatment. (2010)

Grafton

Silver Lake Weed Barrier. To further fund the installation of a benthic weed barrier at Silver Lake Beach to preserve the beach. (2007)

Lake Ripple dredging. To improve the overall habitat of Lake Ripple by dredging and removing weeds from an overgrown area. (2005)

Silver Lake Weed Barrier. To purchase and install aquatic weed control materials at Silver Lake Beach to preserve the beach. (2004)

Groton

2018-02. Baddacook Pond. This project continues a 3-year plan to restore Baddacook Pond by weed harvesting and hydro-raking of invasive weeds. (2018)

2018-02. Baddacook Pond. This project funds the mechanical removal of invasive seeds from Baddacook Pond to improve the health of the Ponds. (2017)

Groveland

Johnson's Pond Management Plan. Management Plan taking water quality measurements and improving access by removing invasive species and undesirable weeds to improve passive recreation use, fishing and boating on Johnson's Pond. (2017)

Hadley

Monitoring of water quality in Lake Warner. (2016)

Lake Warner water testing. (2019)

Hamilton

Weaver Pond Nuisance Vegetation Control. Includes the use and operation of the hydro-rake to remove plants with large/well-developed root systems, (2009).

Weaver Pond Restoration. The removal of invasive species in Weaver Pond. (2018)

Harvard

Bare Hill Pond Drawdown Pump Project. For the purchase and installation of a drawdown pumping station for Bare Hill Pond to preserve pond from invasive weeds. (2006)

Hingham

Cushing Pond restoration. To treat the Pond with federal and state approved chemicals to remove invasive plant species. Initial application plus 3 booster applications (2006)

Holliston

Lake Winthrop Management Plan. Develop a Management Plan to preserve, restore and improve environmental benefits. Plan will identify strategies to manage invasive. (2012)

Mashpee

Restoration of the Upper Quashnet River System. To restore river system to improve water quality, aquatic and riverbank habitat, and to re-establish once prolific cold water fishery. (2019)

Mendon

Invasive Non-Native Water Chestnut Removal. Removal of 60 tons of the invasive non-native water chestnut from the Inman Pond located on Meadow Brook Woods 1 property. (2009)

Invasive Non-Native Water Chestnut Removal. Removing invasive non-native water chestnuts from the Inman Pond on the meadow Brook Woods Property. (2010)

Invasive Non-Native Water Chestnut Removal. Removing invasive non-native water chestnuts from the Inman Pond. (2012)

Invasive Non-Native Water Chestnut Removal. To remove invasive weed mechanically and by hand to preserve the health of the pond. (2013)

Mechanical Weed Removal on Inman Pond. Mechanical removal of the non-native invasive water chestnut weed from the Inman Pond. (2014)

Nantucket

Nantucket Land Council Hummock Pond. Restoration of water quality in Head of Hummock Pond for years 1 and 2. The control of Eutrophication and Harmful algal blooms using habitat disturbance and long-distance circulation with solar-bee technology. (2011)

The Nantucket Pond Coalition. To eradicate Phragmites on White Goose Cove, Long Pond subject to approval of the Nantucket Conservation Commission. (2016)

Needham

Rosemary Lake Sediment Removal. Design funds to determine scope of work to remove sediment from Rosemary Lake, improving quality of water flowing into Rosemary Brook (2016)

Rosemary Lake Sediment Removal. Dredging and off-site management of sediment. (2018)

Norwell

Jacobs Pond Restoration. Weed control of pond. (2014)

Norfolk

Environmental Assessment Town Ponds. Conduct an environmental assessment and survey of the southern portion of Bush Pond, Highland Lake and Town Pond. (2011)

Northampton

Broad Brook Coalition Invasive Removal. Removal of invasive species at Fitzgerald Lake Conservation Area. (2019).

19D Fitzgerald Lake Invasive Control- Broad Brook Coalition. Funding for continued removal of invasive plants within the Fitzgerald Lake Conservation Area . (2016)

85- Invasive Removal - Lathrop Communities. Priority invasive species removal at Parsons Brook and Broad Brook.(2015)

Northborough

Weed Control at Bartlett Pond. Approximately every three years, Bartlett Pond is evaluated and treated for weeds. Systemic herbicide to reduce infestation of invasive weeds. (2017)

Weed Control at Bartlett Pond. Perform weed control measures on problem vegetation within Bartlett Pond. (2013)

Oak Bluffs

Mass Estuaries Project - Oak Bluffs Harbor and Sunset Lake. Preparation of water quality reports through the Massachusetts Estuaries Program for two significant watersheds. (2011)

Farm Pond Invasive Species Mapping. Maps for monitoring primarily Phragmites, and invasive plan in hopes of restoring native oyster population and bringing people back to the pond. (2007)

Pembroke

Pond Treatment. Treatment of Oldham Pond for suppression of blue-green algae and for the treatment of Hobomock Pond for hydrilla control. (2017)

Pond Treatment. Treatment of Oldham Pond for the suppression of blue-green algae; treatment of Hobomock Pond for hydrilla, and treatment of surface pond for microscopic algae.(2014)

Quincy

Butlers Pond Restoration. Study to improve the water quality of Butlers Pond. (2010)

DPW Sailor's Pond Feasibility Study. Sailors Pond Feasibility Study regarding invasive phragmites and water health. (2016)

Manet Lake Feasibility Study. Study and preserve integrity of Manet Lake (2017)

Randolph

Powers Farm Hydro-raking. Hydro-raking the pond will restore the depth through the removal of plant material and organic matter, increase available open water habitat for aquatic wildlife. (2016)

Glovers Brook Rehabilitation. Glovers Brook currently has a large build-up of silt and sand and invasive, non-native species. Removal of invasive plant life and silt and sand built up. (2017)

Belcher Park Pond Restoration: Over fertilization and excessive nutrient loading over the years have caused Belcher Pond to be full of recurrent algal blooms, reduced transparency and dense aquatic vegetation. The restoration will remove the aquatic vegetation improving the water quality and wildlife habitat restoration. (2017)

Norroway Pond Restoration. The remediation of Norroway Pond will continue hydro-raking, remove invasive vegetation from the Parks's Atlantic White Cedar Swamp, as well as evaluation and implementation of treatment and aeration of the water. (2017)

Rockport

Millbrook Pond Dredging. Dredging and rehabilitating the historic Millbrook Pond and Frog Pond. (2016)

Millbrook Dredging 2. Completion of dredging project for Mill Pond and Frog Pond. (2012)

Stockbridge

Larrywaug Brook. Restoration and invasive species removal along Larrywaug Brook. (2014)

Lake Mahkeenac Management. To fund management of Lake Mahkeenac, to control invasive species, particularly the Eurasian Milfoil. (2009)

Kampoosa Bog Invasive Species Management. Removal and management of invasive species in Bog basin. (2009)

Stow

Lake Boon Preservation. For invasive aquatic vegetation removal preserve Lake Boon as a community resource. (2007)

Sudbury

Carding Mill Pond Harvesting. Harvest of non-native aquatic weeds. (2011)

Grist Mill, Carding Mill Pond and Stearns Mill Pond Invasive Weed Removal. Harvest invasive weeds from three ponds. (2015)

Grist Mill Pond, Carding Mill Pond and Stearns Mill Pond Invasive Weed Removal. Harvesting of non-native, invasive aquatic weeds and other restoration activities by the Hop Brook Protection Association one course of three year period. (2018)

Carding Mill Pond Harvesting. To harvest non-native aquatic weeds. (2006)

Tewksbury

Long Pond Water Quality. Chemically treat pond to address algae, nutrient levels, and aquatic plant management. FY17 Project.(2016)

Long Pond Water Quality. Additional treatment of Long Pond. (2017)

Long Pond Water Quality. Additional chemical treatment of impaired water body and shoreline cleaning. (2017)

Tisbury

Tashmoo Preserve-Herring Run Shellfish restoration. For restoration of Lake Tashmoo Herring Run including testing water and data collection .(2011)

Tashmoo Spring Pond Dredging 2015. Hire an engineer to help accomplish goals of dredging. Pond should see increased water clarity, become deeper and reduce algal growth. (2015)

Tyngsborough

Lake Mascuppic Invasive Species Removal. For invasive species removal. (2005)

Lake Mascuppic Invasive Species Removal Additional appropriation for invasive species removal. (2006)

Massapoag Pond. Weed control to preserve Lake Massapoag by allocating funds for non-invasive weed control. (2007)

Lake Mascuppic Weed Control Program. Execute a weed control program. (2018)

Lake Massapoag Weed Control Program. Execute a weed control program.(2018)

Upton

Lake Wildwood Restoration. Restoration and rehabilitation of land for recreational purposes specifically the treatment of Lake Wildwood for the eradication of invasive weeds. (2015)

Wayland

Great Ponds Management. For aerial scanning and nutrient analysis at the Great Ponds, too to implement weed management techniques (2006)

Wellesley

Morses Pond. Implement a management study of Morses Pond under the joint direction of the Natural Resources Commission, the Recreation Commission and the DPW. (2004)

Morses Pond Management Weed Harvester. For anticipated capital expenditures for the first year of the proposed Morses Pond Management Plan, to be earmarked specifically for the acquisition of a weed harvester and accessory equipment. (2006)

Morses Pond Preservation. Construction and installation of a Phosphorous/sedimentation inactivation system for Morses Pond as a component of the multi-year Morses Pond Management Plan.(2007)

Morses Pond Preservation. Supplemental appropriation for previously approved project for Phosphorous Deactivation System for Stormwater Treatment. (2008)

Morses Pond Preservation. Completion of the final phase of the restoration and preservation of Morses Pond with the dredging of North Basin. (2012)

Comprehensive Pond Management Plan. Funding for the Natural Resources Commission to assess and prioritize immediate concerns at the Town's ponds, and develop a long term preservation and maintenance plan. (2015)

Natural Resources Commission - Mobile Phosphorous Inactivation Unit. Equipment will deliver aluminum poly chloride to the smaller ponds in Wellesley to limit the phosphorous which allows unwanted plant growth in the ponds

Westford

Nabnasset Lake Invasives Control. Control and treatment of invasive and nuisance aquatic vegetation. (2012)

Weston

Charles River Invasive Species Removal Project: Preserve open space by removing invasive Eurasian Water Chestnut from Kingsbury Cove in Weston and other areas in Lake District of Charles River. (2013)

Westport

Bread and Cheese Brook Estuaries Project Sampling. Sampling water of Bread and Cheese Brook as part of the nitrogen eliminating project of the Westport River. (2013).

Preparation of a Targeted Integrated Water Resource Management Plan for the East Branch of the Westport River . (2018).

Weymouth.

Weed Harvesting Whitman's Pond. Harvesting of weeds for Whitmans Pond. (2008)

Whitmans Pond Herbicide Treatment. Herbicide treatment for the west cove and main body of water for purpose of clearing out weeds at the boat launch ramp. (2009)

Whitman's Pond Herbicide Treatment. Herbicide treatment for recreational purpose of Whitman's Pond.. (2009)

Whitman's Pond Restoration. Vegetation Management Action Plan for Whitman's Pond. (2011)

Whitman's Pond Drawdown. Permit approvals to draw down lake level during the winter to eradicate invasive plant species. (2013)

Wilbraham.

Spec Pond Aquatic Vegetation Management. Removal of invasive species at Spec Pond to preserve and expand use of the pond .(2009)

Spec Pond Invasive Plant Remediation. Apply a treatment that will eliminate the weeds without killing the endangered plant terete arrowhead. The remedy is to install a benthic barrier on the bottom of pond to prevent weed proliferation. (2017)



Town of Arlington, Massachusetts

Zoning Board of Appeals Update

Summary:

Zoning Board of Appeals Update

ATTACHMENTS:

| | Type | File Name | Description |
|---|-----------------------|---------------------------------------------------------|--------------------------------|
| ▢ | Reference Material | Public_Comment_ACC_Summary_for_ZBA_meeting_08252020.pdf | 08252020 ACC Public Comment |

Public Comment from Arlington Conservation Commission Chair

ZBA Meeting 08/25/2020

Thorndike Place Comprehensive Permit Hearing

INTRODUCTION

The Town of Arlington Conservation Commission usually administers the state's Wetlands Protection Act as well as the Town of Arlington Wetlands Protection Bylaw, Title V, Article 8 (the "Bylaw") and their implementing regulations. These laws regulate work proposed in and near wetlands. Additionally, the Conservation Commission has broader duties under Massachusetts law to promote and protect the Town's natural resources and watershed.

Pursuant to the Comprehensive Permit law or "40B," the **Zoning Board will be administering the Town's Bylaw when reviewing the Thorndike Place application.** The Conservation Commission is providing background information and comments to assist the Zoning Board in this role. The Conservation Commission will still administer the state Wetlands Law so the Applicant will have to file an application with it to review the project under the Wetlands Protection Act.

To **preserve the wetland resource area functions and mitigate potential harm to those functions as well as to meet the standards in the Town's Wetlands Bylaw and implementing regulations**, the Arlington Conservation Commission respectfully requests that the ZBA consider the comments and recommendations as detailed in our July 9, 2020 letter, with key points summarized in this hearing tonight.

SUMMARY OF COMMENTS

- The **Wetlands Delineation** was performed in the Winter and supporting documentation is missing – this is not compliant with Bylaw regulations which require that it is performed during the growing season so that vegetation can be clearly identified and soils characterized.
- There are 4 wetland resource areas identified so far on the site, one of which, **Isolated Wetlands**, were not shown on the project plans when they were previously identified and approved by the Conservation Commission in 2001 by then peer-reviewer BSC Group - and two of these isolated wetlands are located where current development is planned.
- **Wildlife habitat evaluation** was not presented.
- **Alternatives Analysis** to building / structures within resource areas was not provided - as required by the Town's wetlands regulation for work within the Adjacent Upland Resource Area, which is the 100 ft buffer to resource areas.
- Justifications for **Tree and Vegetation Removal** and details of proposed **Vegetation Mitigation** including tree replacements as required to protect resource area values in the Town's Wetlands Bylaw and regulation were not provided.
- **Stormwater Management Calculations** were missing.
- **Flood Storage Calculations** were missing, including Flood Storage Volumes that will be lost under the proposed project, alternative considerations, and calculations of compensatory flood

storage – Town Bylaw requires 2:1 compensatory flood storage which is 2x as stringent as state law.

- The Applicant did not explain how the proposed project meets the “**Limited environmental impact**” review criteria specified in the ZBA Comprehensive Permit Regulations (adopted 7/08/2015) Section 6.2 & 6.3 – specifically, how the development demonstrates that it will “improve water quality, control flooding, maintain ecological diversity, promote adaptation to climate changes.”
- The Applicant has requested numerous **waivers**; however, insufficient information is presented to justify them. We urge the ZBA not to grant any waivers of the Bylaw or Town wetland regulations because of the important functions provided by the wetland resource areas on the property. Additionally, there is a history of major flood events in this part of Arlington that cause extensive property damage and contaminate resource areas with sewage from Sanitary Sewer Overflow discharges. Prevention of additional flooding is a valid “Local Concern” (as defined in 760 CMR 56.02) that warrants denying waivers of the Bylaw and Town wetland regulations.

We look forward to assisting the ZBA and BETA (the peer review group) in further evaluation and discussion of this proposed project.

Susan D. Chapnick
Chair, Arlington Conservation Commission



Town of Arlington, Massachusetts

Regulation Update

Summary:

Regulations Update: Section 33 Stormwater Management

ATTACHMENTS:

| | Type | File Name | Description |
|---|-----------------------|--------------------------------------|-----------------------------------|
| ▢ | Reference Material | Section_33_Stormwater_Management.pdf | Section 33: Stormwater Management |

Section 33 - Stormwater Management

A. Work or activity specified in a request for determination of applicability or an application for a permit and subject to the Bylaw shall meet, at a minimum and to the extent practicable, the best management practices for stormwater management as set forth in the Stormwater Standards of the Massachusetts Department of Environmental Protection. The Commission may in its sole discretion require the applicant to provide a runoff plan and calculations using the “Cornell” method, and based on the ten-year, fifty-year and one-hundred-year-flood frequency event period. Calculations shall show existing and proposed runoff conditions for comparative purposes and include a narrative on the proposed project’s impact on climate change resilience of the resource area (see Section 31).

B. The requirements of this section shall be met commensurate with the nature, scope, type, and cost of the proposed project or activity



Town of Arlington, Massachusetts

Request for Extension of Order of Conditions

Summary:

Request for Extension of Order of Conditions: 88 Coolidge Road

MassDEP File #091-0278

The project as approved proposed to construct a single family home in the 100-ft wetlands buffer and AURA of an isolated wetland. The project was approved on 10/05/2017.

ATTACHMENTS:

| Type | File Name | Description |
|---------------------------------------------------|------------------------------------------------------------------------------------------------|----------------------------------------|
| Extension Permit for Order of Conditions | [2020.08.19]_Mackie_Shea_Durning_ltr_seeking_extension_of_OOC_-_88_Coolidge_Road_Arlington.pdf | - 88 Coolidge Request for Extension |

August 19, 2020

VIA HAND DELIVERY AND ELECTRONIC MAIL

Susan Chapnick, Chair
Arlington Conservation Commission
Arlington Town Hall, Annex
730 Massachusetts Avenue
Arlington, Massachusetts 02476
Email c/o: esullivan@town.arlington.ma.us

Re: Request for Extensions of Order of Conditions for 88 Coolidge Road, Arlington
MassDEP File No. 091-0278

Dear Chair Chapnick:

On behalf of Jonathan Nyberg, the Applicant for the above-referenced project for the construction of a single-family home, driveway, retaining walls and stormwater management system, I am writing to request an extension of the Order of Conditions issued by the Arlington Conservation Commission on October 5, 2017 (the “OOC”), pursuant to the Arlington Wetlands Protection Bylaw (the “Bylaw”) and the Arlington Regulations for Wetlands Protection (the “Regulations”). A copy of the OOC is attached as **Exhibit A**. I have enclosed a check payable to the Town of Arlington for the required \$150.00 extension request fee.

This Request is made pursuant to Section 16 of the Regulations. The Applicant requests that the Conservation Commission grant the extension because, as set forth in greater detail below, while no work has begun on the project, the only reason the Applicant has not performed the work authorized by the OOC is due to an unavoidable delay, namely an appeal of the OOC to Superior Court in the nature of certiorari under G.L. c. 249, § 4 and an action to quiet title in the Land Court.

A. The Applicant is not requesting an extension of the OOC under the Wetland Protection Act and Regulations

The OOC was issued pursuant to the state Wetlands Protection Act, G.L. c. 131, § 40, and its implementing regulations, 310 CMR 10.00 et seq., and the Bylaw and Regulations. On October 18, 2017, through Elizabeth Pyle, Esq., of Hill Law, Justine Covault of 86 Coolidge Road filed a Request for a Superseding Order of Conditions from the Massachusetts Department of Environmental Protection (“MassDEP”). On February 9, 2018, MassDEP issued a Superseding Order of Conditions (“SOC”) allowing the project by affirming the OOC based upon “1) information and plans submitted; 2) information gathered during the December 6, 2017 site

inspection; and 3) reasons the MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act (WPA).” A copy of the SOC is attached as **Exhibit B**.

The SOC was not appealed and is still valid. Since MassDEP issued the SOC, the Applicant does not need to secure an extension of the OOC under the WPA, because that Order was superseded and replaced by the SOC from MassDEP. Accordingly, this request for an extension only applies to the OOC under the Bylaw and Regulations.

B. Appeal of the OOC under the Bylaw and Regulations to Superior Court

On October 20, 2017, on behalf of Justine Covault, Frederik Heger and Bruce Wheltle, Dan Hill and Elizabeth Pyle of Hill Law filed a Complaint in Middlesex Superior Court against the Conservation Commission and Jonathan Nyberg, with a single count in the nature of certiorari, pursuant to G.L. c. 249, § 4, seeking judicial review of the Conservation Commission’s decision to issue the OOC under the Bylaw and Regulations. A copy of the Complaint is attached as **Exhibit C**. As discussed below, this matter is still not resolved and has been stayed by Order of the Superior Court.

C. Wheltle Litigation – Arlington Supported Stay

On October 26, 2017, on behalf of Bruce and Susan Wheltle, Dan Hill and Elizabeth Pyle of Hill Law filed a Complaint in the Land Court with counts for: 1) Declaratory Judgment pursuant to G.L. c. 231A, § 1; 2) Adverse Possession; and 3) Action to Quiet Title pursuant to G.L. c. 240, §§ 6-10 (the “Wheltle Litigation”). A copy of the Complaint in the Wheltle Litigation is attached as **Exhibit D**. The principle allegation in the Wheltle Litigation was that Bruce and Susan Wheltle, as the owners of 94 Coolidge Road, “hold all right title, and interest in a strip of land located next to their home...by adverse possession.”

The Wheltle Litigation was very involved and lengthy. Attached as **Exhibit E** is the docket from the Wheltle Litigation. The Land Court entered Final Judgment in favor of Jonathan Nyberg and against the Wheltles on August 5, 2020. A copy of the Final Judgment is attached as **Exhibit F**.¹

Over the objection of the Applicant, Elizabeth Pyle sought a stay of the Superior Court proceeding appealing the OOC under the Bylaw and Regulations pending further resolution of the Wheltle Litigation. The Plaintiffs in the Superior Court matter asserted that, if the Wheltles’ argument regarding a taking by adverse possession was validated, the change in the dimensions of 88 Coolidge Road would render the Applicant’s lot unbuildable and, thus, make further adjudication of the OOC moot. Arlington Town Counsel Douglass Heim, Esq., joined Attorney Pyle in support of the Motion to Stay Proceedings. The Superior Court endorsed the Motion to Stay Proceedings on March 28, 2019 and the matter has not had any further activity toward

¹ Though not essential for understanding the grounds for seeking an extension, it is significant to note that, even though the Land Court issued Final Judgment in the Wheltle Litigation on August 5, 2020, when Elizabeth Pyle filed a Status Report to the Superior Court later that same day, she erroneously reported that Final Judgment had not entered.

adjudication since that time. A copy of the Superior Court endorsement of the Motion to Stay Proceedings is attached as **Exhibit G**.

Since the Whelple Litigation is now resolved with a Final Judgment in the Applicant's favor, Jonathan Nyberg intends to request the Superior Court to rescind the stay and direct the parties to complete the judicial review proceedings under G.L. c. 249, § 4.

Given that the appeal of the OOC under the Bylaw and Regulations was still subject to review by the Superior Court for roughly the entire duration of the initial period of the OOC, the Applicant was not at liberty to conduct the work approved in the OOC. It is not possible for construction work to begin on the single-family home and associated infrastructure while the OOC is subject to further judicial review.

CONCLUSION

The outstanding appeal of the OOC under the Bylaw and Regulations in Superior Court provides sufficient grounds for the Conservation Commission to grant the Applicant's request for an extension of the OOC for an additional three-year period from the date of issuance, so that the new expiration date of the OOC under the Bylaw and Regulations would be October, 5, 2023.

Sincerely,



Peter F. Durning

cc: *(via electronic mail)*
Emily Sullivan, Environmental Planner & Conservation Agent, Town of Arlington
Douglas Heim, Esq., Town Counsel, Town of Arlington
Jonathan Nyberg
Sara Dolan
Richard A. Kirby
John F. Shea, Esq.
Robert McLaughlin, Sr., Esq.

EXHIBIT

A



TOWN OF ARLINGTON
MASSACHUSETTS
CONSERVATION COMMISSION

October 5, 2017

HAND DELIVERY

Jonathan Nyberg
P.O. Box 292
Arlington, MA 02476

RE: Order of Conditions for 88 Coolidge Rd - DEP File Number 91-0278

Enclosed is the original Order of Conditions permit for the above-referenced project, issued pursuant to the Wetlands Protection Act, GL c. 131, § 40, and the Arlington Bylaw for Wetland Protection, Title V, Article 8.

No work on the project may begin until ALL of the following requirements have been satisfied:

- ☐ You have signed and returned to this office the attached Certificate of Understanding.
 - ☐ The 10-business day appeal period has elapsed. The appeal period begins on the date of issuance of the Order.
 - ☐ You have had the original Order recorded at the Middlesex South Registry of Deeds and the receipt forwarded to the Conservation Commission. The Order is not valid until properly recorded.
 - ☐ The DEP file number sign has been erected at the project entrance (as specified in the General Conditions).
 - ☐ You have read and understand the enclosed Order of Conditions. Compliance with all conditions and the approved plans is the responsibility of the applicant. Deviation from the approved plans may result in a stop work order or further enforcement, as well as the inability to obtain a Certificate of Compliance.
-
- ☐ You have conducted a "pre-construction site visit" with the Conservation Administrator, installed erosion controls, submitted in writing the names and telephone numbers of the parties responsible for the work (such as the general contractor, erosion control monitor, field engineer, and wetland scientist), and submitted a schedule of construction, as applicable.
 - ☐ Please note that there may be other specific requirements in your Order of Conditions, which may be required for your site. Please be sure to read the whole Order. It is your responsibility to comply with all aspects of the Order.

Upon completion of the project, you must submit:

- ☐ A "Request for a Certificate of Compliance" (state WPA form 8a) and
- ☐ An engineer-stamped and signed "as-built plan" to the Conservation Commission stating that all conditions have been satisfactorily completed in compliance with the plans and the Order.

Once received, your Certificate of Compliance must be recorded at the Middlesex South Registry of Deeds, and the receipt sent to the Conservation Office (as per the Wetlands Protection Regulations).

Please contact our office with any questions at 781-316-3012 or email lshepherd@town.arlington.ma.us.

Thank you,



Lela Shepherd
Environmental Planner/Conservation Agent

Enclosures: Order of Conditions
Certificate of Understanding

Cc:file, DEP-NERO

Received by

Date

TOWN HALL, 730 MASSACHUSETTS AVENUE, ARLINGTON, MA 02476
(781) 316-3012



TOWN OF ARLINGTON
MASSACHUSETTS
CONSERVATION COMMISSION

CERTIFICATE OF UNDERSTANDING

RE: Conditions and Restrictions in Wetland Resource Areas and Buffer Zones


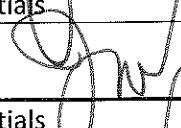
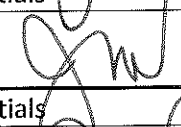
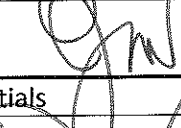
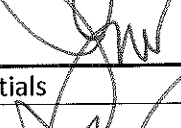
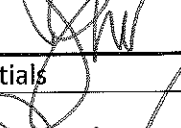
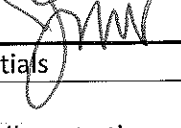
Street Address: 88 Coolidge Rd.

DEP File No: 91-0278

Owner: Jonathan Nyberg

Issue Date: October 5, 2017

I, Jonathan Nyberg, owner of 88 Coolidge Road, Arlington, Massachusetts, do hereby acknowledge and understand that:

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none">• All or some of my property lies within wetland resource areas such that any new work within this area is subject to review and approval by the Conservation Commission; |  Initials |
| <ul style="list-style-type: none">• I, as property owner, am responsible for all work on my property even if it is conducted by contractors; |  Initials |
| <ul style="list-style-type: none">• I have received, read and understand all the general and special conditions contained in the referenced Order of Conditions; |  Initials |
| <ul style="list-style-type: none">• There are specific requirements PRIOR to the start of work which I agree to follow; |  Initials |
| <ul style="list-style-type: none">• There are specific requirements DURING construction and work which I agree to follow; |  Initials |
| <ul style="list-style-type: none">• There are specific requirements for getting a Certificate of Compliance once all permitted work is completed; and |  Initials |
| <ul style="list-style-type: none">• There are a number of ongoing/perpetual conditions that restrict the kind of landscaping and maintenance activities allowed within wetland resource areas and/or buffer zones. |  Initials |

I have carefully reviewed and understand all of these requirements and agree to adhere to them.


Signature

Jonathan Nyberg
Printed Name

10/5/17
Date



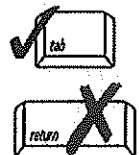
Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
091-0278
MassDEP File #
eDEP Transaction #
Arlington
City/Town

A. General Information

Please note:
this form has
been modified
with added
space to
accommodate
the Registry
of Deeds
Requirements

Important:
When filling
out forms on
the
computer,
use only the
tab key to
move your
cursor - do
not use the
return key.



1. From: Arlington
Conservation Commission

2. This issuance is for
(check one): a. ☒ Order of Conditions b. ☐ Amended Order of Conditions

3. To: Applicant:

Jonathan Nyberg
a. First Name b. Last Name
c. Organization
P.O. Box 292
d. Mailing Address
Arlington MA 02476
e. City/Town f. State g. Zip Code

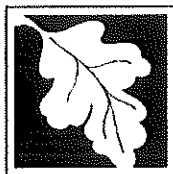
4. Property Owner (if different from applicant):

a. First Name b. Last Name
c. Organization
d. Mailing Address

e. City/Town f. State g. Zip Code

5. Project Location:

88 Coolidge Rd Arlington
a. Street Address b. City/Town
147.0-0004-0008.0
c. Assessors Map/Plat Number d. Parcel/Lot Number
Latitude and Longitude, if known: 42d24m50.544 Ns 71d10m27.03 Ws
d. Latitude e. Longitude



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A. General Information (cont.)

6. Property recorded at the Registry of Deeds for (attach additional information if more than one parcel):
Middlesex
a. County 66161 b. Certificate Number (if registered land) 217
c. Book 6/30/2016 d. Page 8/17/2017
7. Dates: a. Date Notice of Intent Filed 10/5/2017 b. Date Public Hearing Closed c. Date of Issuance
8. Final Approved Plans and Other Documents (attach additional plan or document references as needed):
Drainage/Grading Plan
a. Plan Title Gala Simon Associates, Inc Al Gala, PE
b. Prepared By 8/7/2017 c. Signed and Stamped by 1'=10'
d. Final Revision Date Invasive Spec. Mgmt & Buffer Zone Restoration Plan by LEC e. Scale 7/24/2017
f. Additional Plan or Document Title g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act:

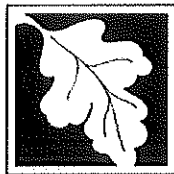
Following the review of the above-referenced Notice of Intent and based on the information provided in this application and presented at the public hearing, this Commission finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act (the Act). Check all that apply:

- a. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
d. ☐ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control

2. This Commission hereby finds the project, as proposed, is: (check one of the following boxes)

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. This Commission orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



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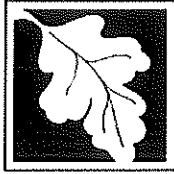
B. Findings (cont.)

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect the interests of the Act, and a final Order of Conditions is issued. **A description of the performance standards which the proposed work cannot meet is attached to this Order.**
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order as per 310 CMR 10.05(6)(c).**
3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and the wetland resource area specified in 310 CMR 10.02(1)(a) 51.8
a. linear feet

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

| Resource Area | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|------------------------------------------------------------------|----------------------------------|----------------------------------|----------------------|-----------------------|
| 4. <input type="checkbox"/> Bank | a. linear feet | b. linear feet | c. linear feet | d. linear feet |
| 5. <input type="checkbox"/> Bordering Vegetated Wetland | a. square feet | b. square feet | c. square feet | d. square feet |
| 6. <input type="checkbox"/> Land Under Waterbodies and Waterways | a. square feet e. c/y dredged | b. square feet f. c/y dredged | c. square feet | d. square feet |
| 7. <input type="checkbox"/> Bordering Land Subject to Flooding | a. square feet | b. square feet | c. square feet | d. square feet |
| Cubic Feet Flood Storage | e. cubic feet | f. cubic feet | g. cubic feet | h. cubic feet |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding | a. square feet | b. square feet | | |
| Cubic Feet Flood Storage | c. cubic feet | d. cubic feet | e. cubic feet | f. cubic feet |
| 9. <input type="checkbox"/> Riverfront Area | a. total sq. feet | b. total sq. feet | | |
| Sq ft within 100 ft | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq ft between 100-200 ft | g. square feet | h. square feet | i. square feet | j. square feet |



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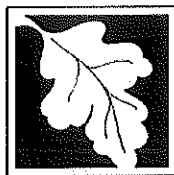
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B. Findings (cont.)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

| | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|--------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-------------------------|------------------------------------|------------------------------------|
| 10. <input type="checkbox"/> Designated Port Areas | Indicate size under Land Under the Ocean, below | | | |
| 11. <input type="checkbox"/> Land Under the Ocean | a. square feet | b. square feet | | |
| | c. c/y dredged | d. c/y dredged | | |
| 12. <input type="checkbox"/> Barrier Beaches | Indicate size under Coastal Beaches and/or Coastal Dunes below | | | |
| 13. <input type="checkbox"/> Coastal Beaches | a. square feet | b. square feet | c. ^{cu yd} nourishment | d. ^{cu yd} nourishment |
| 14. <input type="checkbox"/> Coastal Dunes | a. square feet | b. square feet | c. ^{cu yd} nourishment | d. ^{cu yd} nourishment |
| 15. <input type="checkbox"/> Coastal Banks | a. linear feet | b. linear feet | | |
| 16. <input type="checkbox"/> Rocky Intertidal Shores | a. square feet | b. square feet | | |
| 17. <input type="checkbox"/> Salt Marshes | a. square feet | b. square feet | c. square feet | d. square feet |
| 18. <input type="checkbox"/> Land Under Salt Ponds | a. square feet | b. square feet | | |
| | c. c/y dredged | d. c/y dredged | | |
| 19. <input type="checkbox"/> Land Containing Shellfish | a. square feet | b. square feet | c. square feet | d. square feet |
| 20. <input type="checkbox"/> Fish Runs | Indicate size under Coastal Banks, Inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above | | | |
| | a. c/y dredged | b. c/y dredged | | |
| 21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | a. square feet | b. square feet | | |
| 22. <input type="checkbox"/> Riverfront Area | a. total sq. feet | b. total sq. feet | | |
| Sq ft within 100 ft | c. square feet | d. square feet | e. square feet | f. square feet |
| Sq ft between 100-200 ft | g. square feet | h. square feet | i. square feet | j. square feet |



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B. Findings (cont.)

* #23. If the project is for the purpose of restoring or enhancing a wetland resource area in addition to the square footage that has been entered in Section B.5.c (BVW) or B.17.c (Salt Marsh) above, please enter the additional amount here.

23. ☐ Restoration/Enhancement *:

a. square feet of BVW

b. square feet of salt marsh

24. ☐ Stream Crossing(s):

a. number of new stream crossings

b. number of replacement stream crossings

C. General Conditions Under Massachusetts Wetlands Protection Act

The following conditions are only applicable to Approved projects.

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. The work is a maintenance dredging project as provided for in the Act; or
 - b. The time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
 - c. If the work is for a Test Project, this Order of Conditions shall be valid for no more than one year.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order. An Order of Conditions for a Test Project may be extended for one additional year only upon written application by the applicant, subject to the provisions of 310 CMR 10.05(11)(f).
6. If this Order constitutes an Amended Order of Conditions, this Amended Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.



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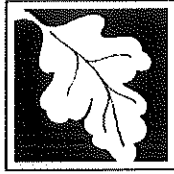
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C. General Conditions Under Massachusetts Wetlands Protection Act

8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Conservation Commission on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,

"Massachusetts Department of Environmental Protection" [or, "MassDEP"]
"File Number 91-0278 "
11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before MassDEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Conservation Commission.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Conservation Commission in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands

WPA Form 5 – Order of Conditions

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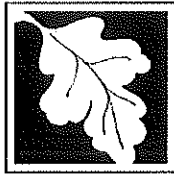
City/Town

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Conservation Commission.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Conservation Commission, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.
19. The work associated with this Order (the "Project")
- (1) ☐ is subject to the Massachusetts Stormwater Standards
 - (2) ☒ is NOT subject to the Massachusetts Stormwater Standards

If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:

- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.
- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
 - i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;



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C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;

v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.

c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 18(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMP Operation and Maintenance Plan ("O&M Plan") and certifying the following:

i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and

ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.

d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.

e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 18(f) through 18(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 18(f) through 18(k) with respect to that BMP shall be a violation of the Order of Conditions or Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
WPA Form 5 – Order of Conditions
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

Provided by MassDEP:
091-0278
MassDEP File #

eDEP Transaction #
Arlington
City/Town

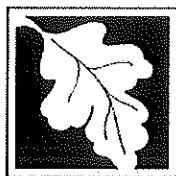
C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Special Conditions (if you need more space for additional conditions, please attach a text document):

See attached 15 pages, conditions #21-56 applicable under Wetlands Protection Act and Arlington Wetlands Protection Bylaw.

20. For Test Projects subject to 310 CMR 10.05(11), the applicant shall also implement the monitoring plan and the restoration plan submitted with the Notice of Intent. If the conservation commission or Department determines that the Test Project threatens the public health, safety or the environment, the applicant shall implement the removal plan submitted with the Notice of Intent or modify the project as directed by the conservation commission or the Department.



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

1. Is a municipal wetlands bylaw or ordinance applicable? ☒ Yes ☐ No
2. The Arlington Conservation Commission hereby finds (check one that applies):
- a. ☐ that the proposed work cannot be conditioned to meet the standards set forth in a municipal ordinance or bylaw, specifically:

1. Municipal Ordinance or Bylaw

2. Citation

Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides measures which are adequate to meet these standards, and a final Order of Conditions is issued.

- b. ☒ that the following additional conditions are necessary to comply with a municipal ordinance or bylaw:

Arlington Bylaw for Wetlands Protection

Title V, Art 8

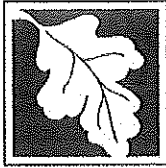
1. Municipal Ordinance or Bylaw

2. Citation

3. The Commission orders that all work shall be performed in accordance with the following conditions and with the Notice of Intent referenced above. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, the conditions shall control.

The special conditions relating to municipal ordinance or bylaw are as follows (if you need more space for additional conditions, attach a text document):

See attached 15 pages, conditions #21-56.



Massachusetts Department of Environmental Protection
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Provided by MassDEP:

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E. Signatures

This Order is valid for three years, unless otherwise specified as a special condition pursuant to General Conditions #4, from the date of issuance.

1. Date of Issuance

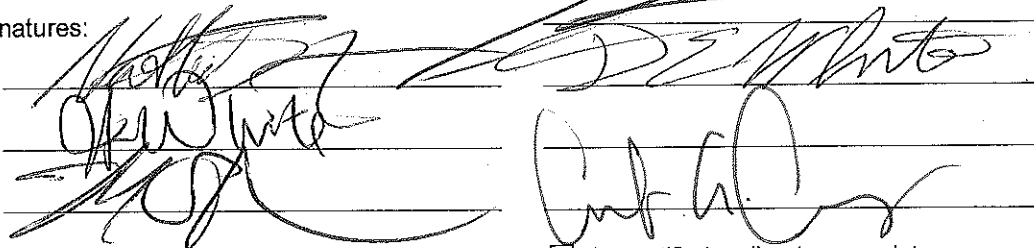
Please indicate the number of members who will sign this form.

This Order must be signed by a majority of the Conservation Commission.

2. Number of Signers

The Order must be mailed by certified mail (return receipt requested) or hand delivered to the applicant. A copy also must be mailed or hand delivered at the same time to the appropriate Department of Environmental Protection Regional Office, if not filing electronically, and the property owner, if different from applicant.

Signatures:



☐ by hand delivery on

☐ by certified mail, return receipt requested, on

Date

Date

F. Appeals

The applicant, the owner, any person aggrieved by this Order, any owner of land abutting the land subject to this Order, or any ten residents of the city or town in which such land is located, are hereby notified of their right to request the appropriate MassDEP Regional Office to issue a Superseding Order of Conditions. The request must be made by certified mail or hand delivery to the Department, with the appropriate filing fee and a completed Request for Departmental Action Fee Transmittal Form, as provided in 310 CMR 10.03(7) within ten business days from the date of issuance of this Order. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Any appellants seeking to appeal the Department's Superseding Order associated with this appeal will be required to demonstrate prior participation in the review of this project. Previous participation in the permit proceeding means the submission of written information to the Conservation Commission prior to the close of the public hearing, requesting a Superseding Order, or providing written information to the Department prior to issuance of a Superseding Order.

The request shall state clearly and concisely the objections to the Order which is being appealed and how the Order does not contribute to the protection of the interests identified in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, § 40), and is inconsistent with the wetlands regulations (310 CMR 10.00). To the extent that the Order is based on a municipal ordinance or bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.



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G. Recording Information

Prior to commencement of work, this Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on this page shall be submitted to the Conservation Commission listed below.

Arlington 730 Massachusetts Ave, Arlington MA 02476
Conservation Commission

Detach on dotted line, have stamped by the Registry of Deeds and submit to the Conservation Commission.

To:

Arlington
Conservation Commission

Please be advised that the Order of Conditions for the Project at:

88 Coolidge Rd
Project Location

91-0278
MassDEP File Number

Has been recorded at the Registry of Deeds of:

Middlesex
County

Book

Page

for: Jonathan Nyberg
Property Owner

and has been noted in the chain of title of the affected property in:

66161
Book

217
Page

In accordance with the Order of Conditions issued on:

10/5/2017
Date

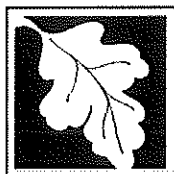
If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
**Request for Departmental Action Fee
Transmittal Form**

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

091-0278

Provided by DEP

A. Request Information

1. Location of Project

a. Street Address

b. City/Town, Zip

c. Check number

d. Fee amount

2. Person or party making request (if appropriate, name the citizen group's representative):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

3. Applicant (as shown on Determination of Applicability (Form 2), Order of Resource Area Delineation (Form 4B), Order of Conditions (Form 5), Restoration Order of Conditions (Form 5A), or Notice of Non-Significance (Form 6)):

Name

Mailing Address

City/Town

State

Zip Code

Phone Number

Fax Number (if applicable)

4. DEP File Number:

Important:
When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



B. Instructions

1. When the Departmental action request is for (check one):

- ☐ Superseding Order of Conditions – Fee: \$120.00 (single family house projects) or \$245 (all other projects)
- ☐ Superseding Determination of Applicability – Fee: \$120
- ☐ Superseding Order of Resource Area Delineation – Fee: \$120



Massachusetts Department of Environmental Protection
Bureau of Resource Protection - Wetlands
Request for Departmental Action Fee
Transmittal Form

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

DEP File Number:

091-0278

Provided by DEP

B. Instructions (cont.)

Send this form and check or money order, payable to the *Commonwealth of Massachusetts*, to:

Department of Environmental Protection
Box 4062
Boston, MA 02211

2. On a separate sheet attached to this form, state clearly and concisely the objections to the Determination or Order which is being appealed. To the extent that the Determination or Order is based on a municipal bylaw, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no appellate jurisdiction.
3. Send a **copy** of this form and a **copy** of the check or money order with the Request for a Superseding Determination or Order by certified mail or hand delivery to the appropriate DEP Regional Office (see <http://www.mass.gov/eea/agencies/massdep/about/contacts/>).
4. A copy of the request shall at the same time be sent by certified mail or hand delivery to the Conservation Commission and to the applicant, if he/she is not the appellant.

Referenced Documents

DOCUMENTS REVIEWED

1. Notice of Intent for work at 88 Coolidge Road, Arlington, MA, signed Richard Kirby, LEC Environmental Consultants (LEC) on behalf of the Applicant: Jonathan Nyberg, dated June 30, 2016 (30 pages).
2. Minutes of the February 25, 2016, Arlington Conservation Commission ("ACC") meeting.
3. A Stop Work Order issued on (approx. February 26, 2016) by Conservation Administrator Cori Beckwith.
4. Soil Testing Program Plan, prepared by Gala Simon Associates, Inc. (GSA), dated March 1, 2016.
5. Minutes of the March 3, 2016, ACC meeting.
6. Letter from Bruce Wheltle dated March 10, 2016.
7. Letter from Bruce Wheltle dated March 15, 2016.
8. Minutes of the March 17, 2016, ACC meeting.
9. Revised Plan, prepared by GSA, submitted on April 7, 2016.
10. Minutes of the April 7, 2016, ACC meeting.
11. Approval of request for site access to complete test pits by Cori Beckwith, dated April 12, 2016.
12. Drainage/Grading Plan for Lot A Coolidge Rd., prepared by GSA, dated June 3, 2016.
13. Letter from Wayne Chouinard, PE, Arlington Town Engineer, dated July 12, 2016.
14. Minutes of the July 21, 2016, ACC meeting.
15. Letter from Bruce Wheltle, dated July 25, 2016.
16. Letter from Susan Wheltle, dated July 28, 2016.
17. Email from Bruce and Susan Wheltle, dated August 2, 2016.
18. Letter received from Elizabeth Pyle, Esq., on August 18, 2016.

19. Request for Continuance from LEC, dated August 18, 2016.
20. Request for Continuance from LEC, dated October 3, 2016.
21. Request for Continuance from LEC, dated September 15, 2016.
22. Notice of Intent Application Addendum for work at 88 Coolidge Road, Arlington, MA, prepared by LEC, dated October 25, 2016; including:
 - a. a revised *Drainage/Grading Plan*, dated June 3, 2016, revised through October 18, 2016;
 - b. and *Revised Engineering Drainage Calculations* dated June 3, 2016, revised through October 18, 2016, both prepared by Gala Associates ;
 - c. an *Invasive Species Management and Buffer Zone Restoration Planting Plan* dated October 21, 2016 prepared by LEC,
 - d. a *Variance Request* from the Arlington Bylaw Regulations tree replacement requirements, and
 - e. a letter from Peter F. Durning, Esq., dated October 25, 2016.
23. Letter from Raquel Alonzo-Perez, dated October 26, 2016.
24. Report from Bruce Wheltle, dated November 3, 2016.
25. Letter from Elizabeth Pyle, Esq., dated November 3, 2016.
26. Minutes of the November 3, 2016, ACC meeting.
27. Transcript of the November 3, 2016, ACC meeting prepared by Susan and Bruce Wheltle.
28. Letter from Susan and Bruce Wheltle, dated November 21, 2016 (20 pages long and includes 3 exhibits).
29. Letter from Justine Covault of 86 Coolidge Road, dated November 21, 2016.
30. Email from Elizabeth Pyle, Esq., dated November 21, 2016.
31. Letter with audio file of Eastern Screech Owl from Megan Burns, dated November 21, 2016.
32. Mullin Certification by Nathaniel Stevens submitted on November 28, 2016 for the July 21, 2016 ACC meeting.
33. Request for Continuance from LEC, dated November 28, 2016.
34. NOI Addendum II, prepared by LEC, dated December 6, 2016, including:

- a. Appendix A *Invasive Species Management and Buffer Zone Restoration Planting Plan* dated October 21, 2016, revised through December 2, 2016;
 - b. Appendix B – Letter from Peter F. Durning, Esq., dated December 6, 2016;
 - c. Appendix C resume of Brian Madden, LEC;
 - d. *Site Plan*, prepared by GSA, dated December 2, 2016;
 - e. an *Alternatives Exhibit Plan* and prepared by GSA, dated December 2, 2016;
 - f. *75-Buffer foot Restricted Zone Exhibit Plan*, prepared by GSA, dated December 2, 2016; and
 - g. *Engineer Drainage Calculations*, prepared by GSA, dated December 2, 2016.
35. Memo prepared by Cori Beckwith, Conservation Administrator, dated December 13, 2016.
36. Minutes of the December 15, 2016 ACC meeting.
37. Letter from Richard Kirby of LEC, dated December 15, 2016.
38. Copy of transmittal of NOI Addendum II and associated plan set directed to Wayne Chouinard, Arlington Town Engineer, dated December 2, 2016.
39. Proposal for peer review services from Epsilon Associates, Inc., dated December 30, 2016.
40. Request for Continuance to January 19, 2017 from LEC, dated January 3, 2017.
41. Email from Wayne Chouinard, Arlington Town Engineer, dated January 5, 2017.
42. Proposal for peer review services from Haley & Aldrich, Inc., dated January 13, 2017.
43. Proposal for peer review services from SITEC, dated January 17, 2017.
44. Proposal for peer review services from New England Environmental, dated January 18, 2017.
45. Proposal for peer review services from Nobis Engineering, Inc., dated February 1, 2017.
46. Request for Continuance to February 2, 2017 from LEC, dated January 18, 2017.
47. Email from Elizabeth Pyle, Esq., dated January 24, 2017.
48. Email from Peter F. Durning, Esq., dated January 24, 2017.
49. Email from Bruce Whelple attaching a photograph, dated January 30, 2017.
50. Memo from Nathaniel Stevens, Arlington Conservation Commission Chair, dated February 2, 2017.

51. Minutes of the February 2, 2017ACC meeting.
52. Email from Attorney Elizabeth Pyle attaching the March 1, 2010, peer review request for Lot C, Coolidge Road
53. Email from Bruce Wheltle attaching a map, dated February 21, 2017.
54. Emergency Request for removal of 3 trees at 88 Coolidge Road from LEC, dated February 28, 2017.
55. Tree removal order of the Town of Arlington Tree Warden, dated March 2, 2017.
56. Emergency Certification for Tree Removal at 88 Coolidge Road, dated March 3, 2017.
57. Contract for peer review services between the Town of Arlington and Nobis Engineering, Inc., dated March 23, 2017.
58. Emergency Certification for Tree Removal at 88 Coolidge Road (extension), dated March 31, 2017.
59. Request for Continuance to April 27, 2017 from LEC, dated March 30, 2017.
60. Email from Elizabeth Pyle, Esq., dated April 8, 2017.
61. Limited site access and release form signed by Jonathan Nyberg, dated April 11, 2017.
62. Submittal from Bruce Wheltle, dated April 12, 2017.
63. Email from Jim Vernon, Nobis Engineering, Inc., dated Apr 13, 2017.
64. Email from Richard A. Kirby, LEC, dated April 18, 2017.
65. Email from Elizabeth Pyle, Esq., dated April 18, 2017.
66. Email from Jonathan Nyberg, dated April 25, 2017.
67. Email from Nathaniel Stevens to Jonathan Nyberg, dated April 25, 2017.
68. Email from Bruce Wheltle, dated April 26, 2017.
69. Draft Report Hydrogeologic Peer Review of NOI for 88 Coolidge Road prepared by Nobis Engineering, Inc., dated April 28, 2017.
70. Request for Continuance to May 18, 2017 from LEC, dated May 1, 2017.

71. Email from Rich Kirby, LEC, dated May 3, 2017.
72. Submittal from Jim Vernon, Nobis Engineering, Inc., dated May 3, 2017.
73. Email from Elizabeth Pyle, Esq., dated May 4, 2017.
74. Minutes of the May 4, 2017 ACC meeting.
75. Administrative Approval of the additional test pits with conditions issued by the Town of Arlington Conservation Commission, dated May 8, 2017.
76. Email from Bruce Wheltle, dated May 12, 2017 with attachment.
77. Request for Continuance to June 15, 2017 from LEC, dated May 16, 2017.
78. Request for Continuance to June 15, 2017 from LEC, dated May 16, 2017.
79. Email from Rich Kirby, dated May 16, 2017.
80. Request for Continuance to July 20, 2017 from LEC, dated June 12, 2017.
81. Emergency Certification for Tree Removal at 88 Coolidge Road, dated June 28, 2017.
82. Hydrogeologic Review for 88 Coolidge Road, Arlington, prepared by Matt Hodge, P.E., Hodge.WaterResources, LLC, dated July 5, 2017.
83. Existing Conditions & Site Preparation Plan for 86 Coolidge Road, prepared by GSA, dated July 3, 2017.
84. Revised Drainage/Grading Plan [C-1] at 86 Coolidge Road, prepared by GSA, dated July 3, 2017.
85. Invasive Species Management & Buffer Zone Restoration Planting Plan for 88 Coolidge Road, prepared by LEC, dated July 24, 2017.
86. Hydrogeologic Peer Review of a Notice of Intent for 88 Coolidge Road, Arlington, prepared by James Vernon, PhD., Nobis Engineering, Inc., dated July 24, 2017, with 6 attachments.
87. Presentation entitled Independent Hydrogeologic Study, 88 Coolidge Road, Arlington, Massachusetts, presented by James Vernon, PhD., Senior Hydrologist with Nobis Engineering, Inc., at the August 2, 2017 Arlington Conservation Commission meeting.
88. Letter from Elizabeth Pyle, Esq., dated August 1, 2017.
89. Letter from Peter F. Durning, Esq., dated August 2, 2017.

90. Letter from Pat Baillieul, dated August 1, 2017.
91. Minutes of the August 2, 2017 ACC meeting.
92. Transmittal letter from Gala Simon Associates, Inc. dated August 9, 2017.
93. Drainage/Grading Plan, prepared by Gala Simon Associates, Inc., dated June 3, 2016, as revised, August 7, 2017.
94. Sketch S-1 by Gala Simon Associates, Inc., dated August 7, 2017.
95. Sketch S-2 by Gala Simon Associates, Inc., dated August 7, 2017.
96. Engineering Drainage Calculations for 88 Coolidge Road, Arlington, Massachusetts, prepared by Gala Simon Associates, Inc., dated June 3, 2016, revised through August 7, 2017 (38 pages).
97. Letter from Matt Hodge, P.E., Hodge WaterResources, LLC, dated August 9, 2017.
98. Submittal from Bruce Wheltle, dated August 9, 2017.
99. Memo from Justine Covault, dated August 6, 2017, received August 11, 2017 (8 pages).
100. Email from Bruce Wheltle, dated August 11, 2017.
101. Email from Bruce Wheltle, dated August 11, 2017 transmitting via Dropbox an August 10, 2017 memo to the Commission (dated August 10, 2017) on Five Years of Photos (151 photographs).
102. Email from Bruce Wheltle, dated August 11, 2017.
103. Mullin Rule Certification prepared by Susan Chapnick for August 17, 2017 hearing.
104. Supplemental drainage calculations, prepared by GSA, dated August 16, 2017.
105. Drainage Delineation Plan Proposed Conditions, prepared by GSA, dated August 7, 2017.
106. Handwritten note from Peter F. Durning, Esq. granting an extension of time to September 30, 2017, to issue a final decision, dated August 17, 2017.
107. Memorandum from Elizabeth Pyle, Esq., dated August 17, 2017.
108. Unofficial property record card and deed for 86 Coolidge Road, printed on August 15, 2017.

109. E-mail from Peter F. Durning, Esq. granting an extension of time to October 6, 2017, to issue a final decision.

PROCEDURAL SUMMARY

The Conservation Commission held hearings on the June 30, 2016 Notice of Intent on July, 21, 2016, August 4, 2016, August 18, 2016, November 3, 2016, December 1, 2016, December 15, 2016, January 5, 2017, January 19, 2017, February 2, 2017, March 2, 2017, March 16, 2017, April 6, 2017, April 27, 2017, May 4, 2017, May 18, 2017, June 1, 2017, June 15, 2017, August 2, 2017, and August 17, 2017. The Commission closed the hearing on August 17, 2017 and on September 7, 2017 deliberated and voted 6-0 to approve the Project with conditions under the Wetlands Protection Act (the "Ac") and voted 4-2 to approve the Project with conditions under the Arlington Wetlands Protection Bylaw (the "Bylaw").

During the period of the hearings, the Applicant on February 28, 2017, applied for an Emergency Certification for the removal of two Norway Maple trees toward the rear of the property that were in poor health and had dropped branches on abutting property. The Arlington Tree Warden inspected the trees and ordered their removal. The Commission considered the request at its March 2, 2017 meeting and issued an Emergency Certification the following day. Due to the difficulty the Applicant had in finding someone to remove the trees, the Commission issued additional Emergency Certifications on March 31, 2017 and June 28, 2017, with the trees being removed in early July 2017.

Partially at the neighbors' urging, and partially to answer its own questions about the Project's possible effect on resource areas and resource area values, the Commission selected and then engaged James Vernon, P.E. of Nobis Engineering as a peer review consultant. Mr. Vernon conducted a lengthy site visit (on April 11, 2017), including visiting the neighborhood, prepared a draft and then final report following comments, and presented and discussed his findings at the Commission's August 2, 2017 meeting.

FINDINGS OF FACT AND LAW
UNDER ARLINGTON WETLANDS PROTECTION BYLAW
AND WETLANDS PROTECTION ACT

- A. The Project as revised and approved involves the construction of a single-family dwelling with a footprint of 1,305+/- square feet, driveway, and appurtenant utilities, retaining walls, and stormwater management devices on an undeveloped 6,035-square-foot lot located at 88 Coolidge Road in Arlington. The house footprint is not larger than the footprint of 35 houses in the neighborhood; unlike many if not all houses in the neighborhood, this house project will have some pervious surfaces and two stormwater infiltration units.
- B. The project site is mostly forested and located in a residential neighborhood. Site topography generally descends southeasterly from Coolidge Road, with an elevation gradient of roughly 25 feet. Roughly two-thirds of the structure will be constructed on top of a concrete foundation that is stepped to remain above bedrock and permit groundwater flow underneath, while the southern (roughly) one-third will be cantilevered over a 285+/- square-foot patio off the basement entrance.

- C. The Commission adopts and incorporates herein by reference from the July 14, 2017 Nobis report the following sections: 1. the "Site Setting and History" on pages 3 and 4; and 2. the observations of Nobis in the "Site Visit" section on pages 6 through 8.
- D. The Project proposes a retaining wall at the back (east side) that will be pervious and a portion of the driveway (not over the stormwater infiltration device) will have pervious pavers. Two stormwater management systems will collect and infiltrate stormwater from the house and driveway. Stormwater from the roof area will be directed to a subsurface stormwater infiltration system behind the pervious driveway while stormwater run-off from the driveway will discharge to a stormwater infiltration system located north of the proposed dwelling. Twelve trees and invasive plants in the understory will be removed. The Applicant will restore 2,500+/- square feet of the Adjacent Upland Resource Area ("AURA")/Buffer Zone by removing the invasive/exotic shrubs and saplings, and establish a native plant community comprised of 18 native sapling trees along with 87 native shrubs and 85 groundcover species including 35 lowbush blueberry and 50 native ferns, the success of which will be monitored for a period of three (3) years. Wildlife habitat enhancement includes installation of 5 bird boxes and 2 roosting bat boxes. The Invasive Species Management & Buffer Zone Restoration Planting Plan meets the requirements of Section 25 of the Commission's regulations and also is satisfactory mitigation for the trees removed pursuant to the Emergency Certification.
- E. The dwelling will measure 51.8 feet from the Bordering Vegetated Wetland ("BVW") boundary at its closest point.
- F. Portions of the proposed activities are located within the Buffer Zone to a BVW, which is the same area as the Adjacent Upland Resource Area ("AURA") under the Commission's Bylaw Regulations (of June 4, 2015). The Applicant proposes to implement erosion controls and stormwater management to minimize the potential for impacts to adjacent land during and after the proposed construction activities.
- G. The following Resource Areas are present on the site or within 100 feet of the lot lines: BVW, stream, and AURA (Bylaw) and Buffer Zone (Act). The Commission finds accurate the delineation of Resource Areas shown on the approved Project Plan; said delineation was revised after the August 2016 site visit.
- H. The Resource Areas on and adjacent to the Property are significant to the Resource Area values protected by the Act and by the Bylaw, as specified in the Bylaw Regulations and 310 CMR 10.00 for each Resource Area.
- I. The Commission considered the numerous and detailed comments and documents from abutters, neighbors, and their attorney, that documented flooding and drainage issues throughout the neighborhood and that also documented many species of wildlife on the Project site and on nearby properties; many of the other properties were developed with single-family homes. This input was tremendous and very helpful to the Commission.

- J. The Commission appreciated the Applicant responding to abutters' and the Commission's questions and comments. Resulting project modifications met the Applicant's burden of demonstrating that no other reasonable alternatives were available or practicable for work in the AURA as required in Section 25 of the Commission's Regulations for Wetlands Protection. In order to protect the interests of wildlife habitat, flood control, storm damage protection/prevention, erosion control and sedimentation (Bylaw only), protection of surrounding land and other homes or buildings (Bylaw only), all of particular concern of abutters, the Applicant reduced the proposed house footprint from 1,875 sq. ft. in the NOI to 1,305 sq. ft. in the final plans (30% reduction in footprint) which allowed for an increase in mitigation planting. In addition, the Applicant agreed to implement all of Nobis' six recommendations to minimize risk of flooding and minimize effects to the Resource Area, including agreeing to commit to an increased level of monitoring (see "Excavation Monitor"), and Applicant's numerous changes to the mitigation / planting plan based on Commission feedback. The Applicant revised its stormwater management plan and calculations several times in response to comments.
- K. The Commission finds the July 14, 2017 Nobis letter report and Mr. Vernon's testimony to be credible and more persuasive than other testimony in the record. The Commission thus adopts as a finding Mr. Vernon's conclusion that "If best management practices described in the design are followed, impacts to the neighboring stream and wetlands are unlikely" (Nobis report, p. 14). Third-party monitoring during excavation will ensure that conditions and BMPs are followed.
- i. Two rounds of test pits indicate that the project should not encounter shallow bedrock or groundwater and that there should be sufficient depth to place minimum of 8 inches of gravel under the foundation for water flow.
 - ii. No bedrock is being removed, and the foundation will not rest on bedrock; therefore, groundwater flow effects and damming effects are very unlikely (Nobis final report 2017).
 - iii. The proposed structure is outside of the 25 foot no-build zone and more than 50 feet from the BVW.
 - iv. Though it is acknowledged that impervious surfaces are increasing, as the current lot has no structures and vegetation is being removed, the Commission finds that the Applicant has met the requirements of Section 24 of the Regulations, which regulates "Vegetation Removal and Replacement". In addition, the Commission finds that the planned restoration area is an improvement to the site closest to the resource area, in that invasive species are being removed and native plantings established for the benefit of wildlife and water infiltration.
- L. The special conditions (several recommended by Nobis in the Final Report, 2017) require the Applicant to stop work if actual site conditions are different than those represented in the Project plans and documents; work cannot proceed until the Applicant has received approval from the Commission. The Commission may require that such approval be through an amendment to this Order and permit.
- M. Based on the testimony at the public hearings, and review of the application materials and the documents listed above submitted during the public hearings, the Commission concludes that

while the proposed Project will alter Resource Areas under the Act and Bylaw, the work as conditioned will not have significant or cumulative effects upon the interests of the Wetlands Protection Act or the Resource Area values of the Arlington Wetlands Bylaw, and the conditions imposed, including erosion controls and excavation monitoring during construction, re-vegetation planting plan, invasive plant management, and stormwater management plans will protect the Resource Area values. With the conditions contained herein, the Project meets the performance standards in the Bylaw Regulations and state Wetlands Regulations, 310 CMR 10.00.

- N. The Commission points out that the 88 Coolidge project is different from those it denied for houses at 47 Spy Pond Lane (DEP File # 91-278) for a number of reasons, including but not limited to:
- 47 Spy Pond Lane was a much larger lot (or even as two lots) and had room beyond the AURA to accommodate house(s), and even room within the existing impervious surface footprints for houses.
 - The 88 Coolidge project offers a more robust and greater amount (proportionally to overall lot size(s)) of mitigation planting than was offered for the much larger 47 Spy Pond Lot.
 - The 88 Coolidge lot does not currently provide superior wildlife habitat as it is not contiguous to any other substantially natural areas (i.e. it has houses all around it); whereas Spy Pond is itself a larger robust wildlife area with which 47 Spy Pond Lane is contiguous.

Additional Special Conditions

In addition to the General Conditions (numbered 1 – 20 above), the Project is subject to the following Additional Special Conditions (under both the Act and Bylaw):

21. Work permitted by this Order and Permit shall conform to the Notice of Intent, latest plans and documents (listed above), and oral representations (as recorded in hearing minutes) submitted or made by the Applicant and the Applicant's agents or representatives, as well as any plans and other data, information or representations submitted per these Conditions and approved by the Commission.
22. The provisions of this Order and Permit shall apply to and be binding upon the Applicant and Applicant's assigns, tenants, employees, contractors, and agents.
23. No work shall be started under this Order until: (a) all other required permits or approvals have been obtained and (b) the appeal period of ten (10) business days from the date of issue of this Order has expired without any appeal being filed. No work shall be started under this Permit until all other necessary permits or approvals have been obtained.
24. The Applicant shall ensure that a copy of this Order of Conditions and Permit for work, with any referenced plans, is available on site at all times, and that contractors, site managers, foremen, and sub-contractors understand its provisions.

25. Prior to starting work, the Applicant shall submit to the Commission the names and 24-hour phone numbers of numbers of project managers or the persons responsible for site work or mitigation.
26. Before work begins, erosion and sediment controls shall be installed at the limits of the work area. These will include a silt fence and straw wattle or staked strawbales around the entire work area (haybales are not allowed).
27. The contractor shall contact the Conservation Administrator (ConComm@town.arlington.ma.us; 781-316-3012) to arrange for a site walk to confirm the installation and placement of erosion controls prior to the start of any grading or construction work.
28. All dumpsters must be covered at the end of each work day, and no dumpsters will be allowed overnight within the 100 foot Buffer Zone or Adjacent Upland Resource Areas or other Resource Areas.
29. No uncovered stockpiling of materials shall be permitted overnight within 100 feet of any waterway or water body. *The area shown on the plans for stockpiling is permitted.*
30. Areas that are disturbed by construction and access activities shall as soon as possible be brought to final grade and reseeded and restabilized, and shall be done so prior to the removal of the erosion control barrier.
31. Arrangements shall be made for dewatering, for any rinsing of tools, equipment, etc. associated with on-site mixing or use of concrete or other materials. In no case may this be placed in stormdrains without prior settling of fines. Any spillage of materials shall be cleaned up promptly.
32. Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.
33. In the event of discovery of hazardous materials on the site during excavation work, clean up of these materials shall conform to the requirements and standards of State law and regulations.
34. No heavy equipment may be stored overnight within 50 feet of the wetland and no refueling or maintenance of machinery shall be allowed within the 100-foot Buffer Zone or within any Resource Area.
35. The Commission, its employees and its agents shall have the right of entry onto the site to inspect for compliance with the terms of this Order of Conditions and Permit.
36. When requesting a Certificate of Compliance for this Order of Conditions, the Applicant must submit a written statement from a Massachusetts professional engineer, registered land surveyor, or registered landscape architect certifying that the completed work complies with the

plans referenced in this Order, or provide an as-built plan and statement describing any differences.

37. The Applicant shall use clean fill consisting of sandy-silt with 85% compaction, and at least seven (7) days prior to bringing fill onto the project site, the Applicant shall notify the Commission and submit to the Commission cut sheets that specify the soil composition and source of the fill.
38. At least twenty-one (21) days before commencement of any excavation, the Applicant shall submit to the Commission for its review and approval design plans and structural design plans, both plans stamped by a professional engineer, for the retaining wall proposed for the southeast side of the dwelling that is to have a minimum of 6 inches crushed stone.
39. No bedrock shall be removed by any means. No blasting, chipping, or fracturing of bedrock is allowed. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
40. No part of the house foundation shall rest on bedrock. A minimum of eight (8) inches depth of crushed stone must be placed under the entire house foundation.
41. To avoid groundwater damming, the house foundation shall not be pinned to bedrock.
42. The "Excavation Monitor" and "Environmental Monitor" in these Special Conditions shall be selected and hired pursuant to the procedures in G.L. Ch. 44, § 53G and the Commission's implementing regulations, and no work may commence or be conducted until and unless both the "Excavation Monitor" and "Excavation Monitor" are hired (meaning their contract and any amendment thereto with the Town of Arlington is approved and thus are available to perform their work).
43. The Applicant shall pay for an independent professional "Excavation Monitor" selected by the Commission to be on site at all times during excavation activities for the house foundation, retaining walls, driveway, and storm water infiltration units and shall remain on site until each is backfilled. No such excavation activities shall occur without the Excavation Monitor present unless permitted by the Commission or its Agent. This Excavation Monitor shall be a hydrogeologist or hydrologist and a Massachusetts Professional Engineer. The Excavation Monitor shall monitor the excavation activities and notify the Commission immediately of any deviation from the Order of Conditions (including project plans and related documents), and, in particular, shall:
 - a. Observe the excavation activities to look for any sign of water entering the excavation from the side walls or from below; and.
 - b. Observe the excavation activities to note if any bedrock is encountered at a depth shallower than shown on the revised Project Plan C-1.In any event, the Excavation Monitor shall provide the Commission after backfilling of excavation a final report via email with photographs on any unexpected circumstances encountered, including but not limited to bedrock and/or water during excavation (see a. and b. above), and any minor project changes that comply with the terms and conditions of this Order

of Conditions. The Excavation Monitor shall note and report to the Commission any of the events described above and shall have the authority to stop work. Work should not resume until a resolution of the observed problem is agreed upon by the Applicant and the Commission with input from the Excavation Monitor.

44. The Applicant shall pay for an independent professional "Environmental Monitor" selected by the Commission to be on site to monitor the Project during all construction and planting work. This Environmental Monitor shall be qualified by experience and education to undertake such monitoring, as determined by the Commission. The Environmental Monitor shall be on site a minimum of once weekly and after any rainfall event of greater than 0.10 inches (over 24 hours) or as requested by the Commission. The Environmental Monitor shall provide the Commission with reports at least weekly via email with photographs of progress as well as more frequent reports on inspection and discovery and resolution of any non-compliance with the conditions in this Order of Conditions. The Environmental Monitor shall have the authority to stop work until any noncompliance is resolved. In addition to the foregoing duties and responsibilities, the Environmental Monitor shall:
- a. Ensure that erosion controls are in place and that best management practices called for in the project documents are followed;
 - b. Give attention to the eastern edge of the work area to make sure there is no discharge of water or soil toward the wetland;
 - c. Give attention to the southeastern property line, to ensure there is no discharge of soil or water toward the abutting property(ies) on Mt. Vernon Street;
 - d. Report any damage to trees;
 - e. Prior to backfilling, inspect and verify that infiltration units are installed properly with the required depths;
 - f. Check that crushed stone below the house foundation is the required 8-inch depth; and
 - g. Check that the plants are planted pursuant to the mitigation planting plan ("Invasive Species Management & Buffer Zone Restoration Planting Plan" by LEC revised thru July 24, 2017).
45. If bedrock elevation is discovered to be higher than represented in the project plans and documents, work shall immediately stop, the Applicant shall immediately notify the Commission, and if the Applicant wishes to continue with the work, shall apply for an Amended Order of Conditions if:
- a. Bedrock elevation prevents a minimum separation of 4 feet between bedrock and the bottom of the Cultec infiltration units;
 - b. Bedrock elevation prevents a minimum separation of 4 feet between bedrock and the pervious pavement system;
 - c. Bedrock elevation prevents a minimum separation of 8 inches between bedrock and the bottom house foundation; or
 - d. Bedrock elevation prevents a minimum separation of 6 inches between bedrock and the bottom of the retaining wall on the eastern side of the house.
46. If the excavation work causes an upward flow of groundwater, work shall immediately stop and measures shall be implemented to contain the flow, and the Applicant shall consult with the Excavation Monitor to determine whether a minor field change can be made that complies with

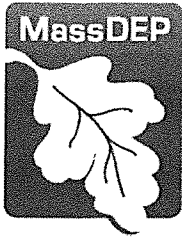
the terms and conditions of this Order of Conditions, and, if so, work may proceed upon immediate oral and written notification of the Conservation Commission. If such a minor field change is not feasible, the Applicant stop work and shall apply for an Amended Order with the knowledge that there is no right to an Amended Order.

47. Pursuant to DEP Wetlands Program policy 85-4-Amended Orders, an amended order is appropriate only for changes that are relatively minor and will have unchanged or less impacts on the interests protected by the Act and Bylaw. The Commission shall determine whether the proposed project change results in the project continuing to meet relevant performance standards, and whether the potential for adverse impacts to the protected statutory interests of the Bylaw and Act will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Act and Bylaw are appropriate for amendments. If the Commission determines that the proposed change would result in a project that is closer to resource areas, triggers new regulatory performance standards, meets such standards to a lesser degree, or that the interests specified in the Wetlands Protection Act or Bylaw are protected less, then the Commission shall not issue the amendment, but require the filing of a new Notice of Intent.
48. A certified arborist shall be hired by the Applicant to be on-site during construction of all retaining walls to insure protection of surrounding trees and shall report to the Commission any damage to trees that the certified arborist deems significant to the short term or long term health of the tree(s).
49. The Restoration Area of approximately 2,500 square feet shall be maintained in compliance with the "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA. The restoration area shall maintain a minimum of 75% coverage by native plants. Replacement plants shall be installed as needed due to mortality. Invasive species shall be removed. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
50. Any plantings and landscaping within the 100-foot Buffer Zone and AURA shall conform to the Invasive Species Management & Buffer Zone Restoration Planting Plan, and the following:
 - a. No plant materials shall be used of any species which appears on the Massachusetts Prohibited Plant list at <http://www.mass.gov/agr/farmproducts/prohibitedplantlist.htm>
 - b. Fertilizers, pesticides, or herbicides shall not be used within the Buffer Zone/AURA except as noted in (c) unless a specific need for treating a particular specimen or species has been demonstrated to the Commission, and permission has been granted.
 - c. Fertilizers may be used at the time of installation of any plant materials, and once more within a year after planting.
51. The "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA shall be recorded as an exhibit with this Order of Conditions and any Certificate of Compliance.

52. The restoration area and management of invasive species shall be monitored for a period of three years, with annual reports submitted to the Conservation Commission for each growing season no later than December 15 of each year. Invasive species shall continue to be removed during the monitoring period.
53. To prevent encroachment, signs reading "Conservation Area – Do Not Disturb" shall be installed and maintained along the edge of the restoration planting area in the locations shown on "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
54. Stormwater drainage systems shall be maintained in accordance with the "Operation and Maintenance Plan for Drainage Systems – Lot A Coolidge Road, Arlington, MA" dated June 3, 2016, revised through August 17, 2017. No components may be replaced without the permission of the Conservation Commission. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
55. Curb (such as "Cape Cod berm") at driveway shall be maintained in perpetuity to minimize surface water flow from street entering property. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
56. Pervious surfaces shown on the project plans shall be maintained and not replaced by impervious surfaces. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**

EXHIBIT

B



Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Northeast Regional Office • 205B Lowell Street, Wilmington MA 01887 • 978-694-3200

Charles D. Baker
Governor

Karyn E. Polito
Lieutenant Governor

Matthew A. Beaton
Secretary

Martin Suuberg
Commissioner

FEB 09 2018

Justine Covault
86 Coolidge Road
Arlington, MA 02476

RE: WETLANDS/ARLINGTON
DEP File# 91-0278
88 Coolidge Road
Superseding Order of Conditions
Affirmation

Dear Ms. Covault:

Following an in-depth review of the file referenced above, and in accordance with the Massachusetts General Laws, Chapter 131, Section 40, the Northeast Regional Office of the Massachusetts Department of Environmental Protection, Wetlands Program (MassDEP), is issuing the enclosed Superseding Order of Conditions (SOC) allowing the project by **affirming** the Arlington Conservation Commission's Order of Conditions (OOC) based upon: 1) information and plans submitted; 2) information gathered during the December 6, 2017 site inspection; and 3) reasons the MassDEP has deemed necessary to protect the statutory interests identified in the Wetlands Protection Act (WPA).

The project proposal is for the construction of a single-family house, driveway, retaining walls and stormwater management system.

MassDEP's review of the file and site inspection confirms that the project site is within the buffer zone of Bordering Vegetated Wetlands (BVW) and the buffer zone of Bank of an intermittent stream.

The Arlington Conservation Commission (ACC) approved the OOC on October 5, 2017. You appealed the OOC on October 18, 2017 based on your belief that the proposed project could potentially impact the BVW and Bank of the intermittent stream by altering the hydrology on the site. You are also concerned about the project's effect on a mature Northern Red Oak tree that is located on your property close to the property line of the applicant.

A site visit was held by MassDEP on December 6, 2017 attended by your representative, the applicant and his representatives and representatives of the conservation commission. The site is a 6,035 square foot undeveloped lot sloping at an approximate 25% grade towards the southeast.

This information is available in alternate format. Contact Michelle Waters-Ekanem, Director of Diversity/Civil Rights at 617-292-5751.

TTY# MassRelay Service 1-800-439-2370

MassDEP Website: www.mass.gov/dep

Printed on Recycled Paper

The lot is within a residential area bordered by Coolidge Road to the northwest and houses on the other three sides. The site is forested with exposed areas of ledge, primarily granite, towards the lower part of the site. Surface drainage on the site flows in a southeasterly direction following the slope of the lot. The intermittent stream and associated BVW located on your property emerges from a stone wall adjacent to the eastern side of your house and flows in a northeasterly direction away from the proposed project site. The stream channel is very shallow and there was no flow observed during the site visit. No surface drainage connection from the proposed project site to the intermittent stream and BVW was observed. The proposed house will be located approximately 52 feet from the BVW at its closest point.

The design and construction of the proposed house has undergone extensive revisions from the original proposal. The footprint of the house was reduced from 1835 square feet to 1305 square feet and the stepped foundation design will be constructed above the unaltered bedrock with a layer of crushed stone between the bedrock and the foundation bottom allowing stormwater flow and groundwater infiltration. These design revisions were reviewed extensively in two different hydrologic reports (Nobis Engineering, Inc., July 24, 2017 and Hodge Water Resources, July 5, 2017 and August 9, 2017). The project also proposes mitigation plantings of trees and shrubs in the undeveloped lower portion of the property that was increased in area as a result of the reduction of the house footprint.

Although stormwater management is not required under the Wetlands Regulations for a single-family house, the applicant has provided a stormwater infiltration system for roof runoff and pervious pavers for the driveway. In response to changes made in the stormwater system, the Hodge Water Resources report dated August 9, 2017 concluded that, "The revised drainage/grading plan demonstrates that the property as developed with a single-family house will function in the same way it functions in its existing condition from a hydrologic and hydrogeologic perspective. There will be no increase in the rate of surface runoff or the rate of shallow groundwater flow off the property and the potential for negative impacts to surrounding properties has been addressed." MassDEP agrees with this conclusion.

Concerning the Northern Red Oak on your property, the applicant has stated that no more than 20% of the tree canopy would be trimmed over his property if necessary if it interferes with the proposed house. MassDEP also encourages minimal trimming of canopy. As an added safeguard, Condition #48 in the Arlington OOC requires a certified arborist to be on site during construction of all retaining walls.

It is MassDEP's opinion that there has been no evidence presented that the proposed project will have any negative impacts on the wetland resource areas near the site. The stormwater infiltration system has been designed to mitigate stormwater runoff from the impervious surfaces of the project and would reduce peak stormwater flows and runoff volumes from existing ones.

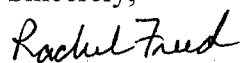
Based on the record, information provided by the applicant, information gathered at the site visit, the comprehensive conditions contained in the Order of Conditions and consideration of all issues raised through the appeal, it is MassDEP's opinion that the project as currently proposed

88 Coolidge Road, Arlington
DEP File# 091-0278
Superseding Order of Conditions-Affirmation
Page 3

and conditioned will protect the interests of the Wetlands Protection Act and Regulations. Therefore, pursuant to 310 CMR 10.05(7)(i), MassDEP is affirming the local Order of Conditions. Please be advised that the MassDEP reserves the right, should there be further proceedings in this matter, to raise additional issues and present further evidence as may be appropriate.

If you have any questions concerning this Superseding Order, please contact Gary Bogue at 978-694-3372.

Sincerely,



Rachel Freed, Deputy Regional Director
Bureau of Water Resources, NERO

cc: Jonathan Nyberg, PO Box 292, Arlington, MA 02476
Elizabeth Pyle, 43 Thorndike Street, Cambridge, MA 02141
Peter F. Durning, 20 Park Plaza, Suite 1118, Boston, MA 02116
Arlington Conservation Commission, 730 Massachusetts Avenue, Arlington, MA 02476



WPA Form 5A – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

091-0278

A. General Information

1. From: Department of Environmental Protection
Issuing Authority
2. This issuance is for (check one):
a. ☒ Superseding Order of Conditions
b. ☐ Amended Superseding Order of Conditions
3. To: Applicant:
Jonathan Nyberg
a. First Name b. Last Name
PO Box 292
c. Organization
PO Box 292
d. Mailing Address Line 1
Arlington MA 02476
e. City/Town f. State g. Zip Code
4. Property Owner (if different from applicant):

a. First Name b. Last Name

c. Organization

d. Mailing Address Line 1

e. City/Town f. State g. Zip Code
5. Project Location:
88 Coolidge Road Arlington
a. Street Address b. City/Town
147.0-0004-0008.0 Parcel 16-C, 15B
c. Assessors Map/Plat Number d. Parcel/Lot Number
- Latitude and Longitude, if known:
e. Latitude f. Longitude

A. General Information (cont'd)

6. Property recorded at the Registry of Deeds (attach additional information if more than one parcel):
Middlesex
a. County b. Certificate (if registered land)
66161 217
c. Book d. Page
7. Dates: 6/30/2016 10/5/2017
a. Date NOI Filed b. Date of Site Visit c. Date of Issuance of Local Order



WPA Form 5A – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

091-0278

8. Final Approved Plans and Other Documents (attach additional plans or document references):

Drainage/Grading Plan

a. Plan Title

Gala Simon Associates Inc.

Alberto M. Gala, RPE

b. Prepared By

c. Signed and Stamped By

8/7/2017

1:10

d. Final Revision Date

e. Scale

Invasive Sp. Mgmt & Buffer Zone Restoration Plan by LEC

7/24/2017

f. Additional Plan or Document Title

g. Date

B. Findings

1. Findings pursuant to the Massachusetts Wetlands Protection Act - Following the review of the above-referenced Notice of Intent and based on the information provided in this application, the Department finds that the areas in which work is proposed is significant to the following interests of the Wetlands Protection Act. Check all that apply:
- a. ☐ Public Water Supply b. ☐ Land Containing Shellfish c. ☒ Prevention of Pollution
d. ☐ Private Water Supply e. ☐ Fisheries f. ☒ Protection of Wildlife Habitat
g. ☒ Groundwater Supply h. ☒ Storm Damage Prevention i. ☒ Flood Control
2. This Department hereby finds the project, as proposed, is (check one):

Approved subject to:

- a. ☒ the following conditions which are necessary in accordance with the performance standards set forth in the wetlands regulations. The Department orders that all work shall be performed in accordance with the Notice of Intent referenced above, the following General Conditions, and any other special conditions attached to this Order. To the extent that the following conditions modify or differ from the plans, specifications, or other proposals submitted with the Notice of Intent, these conditions shall control.



WPA Form 5A – Superseding Order of Conditions
Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

091-0278

B. Findings (cont'd)

Denied because:

- b. ☐ the proposed work cannot be conditioned to meet the performance standards set forth in the wetland regulations. Therefore, work on this project may not go forward unless and until a new Notice of Intent is submitted which provides measures which are adequate to protect these interests, and a final Order of Conditions is issued. A description of the performance standards which the proposed work cannot meet is attached to this Order.
- c. ☐ the information submitted by the applicant is not sufficient to describe the site, the work, or the effect of the work on the interests identified in the Wetlands Protection Act. Therefore, work on this project may not go forward unless and until a revised Notice of Intent is submitted which provides sufficient information and includes measures which are adequate to protect the Act's interests, and a final Order of Conditions is issued. **A description of the specific information which is lacking and why it is necessary is attached to this Order.**

Inland Resource Area Impacts: Check all that apply below. (For Approvals Only)

3. ☒ Buffer Zone Impacts: Shortest distance between limit of project disturbance and wetland boundary (if available) 51.8
a. linear feet

| Resource Area | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|--------------------------------------------------------------------------------------------|--------------------------------------------------|--------------------------------------------------|-----------------------------------------------|-----------------------------------------------|
| 4. <input type="checkbox"/> Bank | <u> </u> a. linear feet | <u> </u> b. linear feet | <u> </u> c. linear feet | <u> </u> d. linear feet |
| 5. <input type="checkbox"/> Bordering Vegetated Wetland | <u> </u> a. square feet | <u> </u> b. square feet | <u> </u> c. square feet | <u> </u> d. square feet |
| 6. <input type="checkbox"/> Land Under Waterbodies and Waterways | <u> </u> a. square feet | <u> </u> b. square feet | <u> </u> c. square feet | <u> </u> d. square feet |
| | <u> </u> e. c/y dredged | <u> </u> f. c/y dredged | | |
| 7. <input type="checkbox"/> Bordering Land Subject to Flooding Cubic Feet Flood Storage | <u> </u> a. square feet | <u> </u> b. square feet | <u> </u> c. square feet | <u> </u> d. square feet |
| | <u> </u> e. cubic feet | <u> </u> f. cubic feet | <u> </u> g. cubic feet | <u> </u> h. cubic feet |
| 8. <input type="checkbox"/> Isolated Land Subject to Flooding Cubic Feet Flood Storage | <u> </u> a. square feet | <u> </u> b. square feet | | |
| | <u> </u> c. cubic feet | <u> </u> d. cubic feet | <u> </u> e. cubic feet | <u> </u> f. cubic feet |
| 9. <input type="checkbox"/> Riverfront area | | | | |
| Sq feet within 100 feet | <u> </u> a. total sq. feet | <u> </u> b. total sq. feet | | |
| | <u> </u> c. square feet | <u> </u> d. square feet | <u> </u> e. square feet | <u> </u> f. square feet |
| Sq feet between 100-200 feet | <u> </u> g. square feet | <u> </u> h. square feet | <u> </u> i. square feet | <u> </u> j. square feet |



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Massachusetts Department of Environmental Protection
Bureau of Resource Protection – Wetlands Program
Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

091-0278

B. Findings (cont'd)

Coastal Resource Area Impacts: Check all that apply below. (For Approvals Only)

10. ☐ Designated Port Areas - Indicate size under Land Under the Ocean, below

| | Proposed Alteration | Permitted Alteration | Proposed Replacement | Permitted Replacement |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------|-------------------------|--------------------------|
| 11. <input type="checkbox"/> Land Under the Ocean | a. square feet c. c/y dredged | b. square feet d. c/y dredged | | |
| 12. <input type="checkbox"/> Barrier Beaches - Indicate size under Coastal Beaches and/or Coastal Dunes below. | | | | |
| 13. <input type="checkbox"/> Coastal Beaches | a. square feet | b. square feet | c. c/y nourish. | d. c/y |
| 14. <input type="checkbox"/> Coastal Dunes | a. square feet | b. square feet | c. c/y nourish. | d. c/y |
| 15. <input type="checkbox"/> Coastal Banks | a. linear feet | b. linear feet | | |
| 16. <input type="checkbox"/> Rocky Intertidal Shores | a. square feet | b. square feet | | |
| 17. <input type="checkbox"/> Salt Marshes | a. square feet | b. square feet | c. square feet | d. square feet |
| 18. <input type="checkbox"/> Land Under Salt Ponds | a. square feet c. c/y dredged | b. square feet d. c/y dredged | | |
| 19. <input type="checkbox"/> Land Containing Shellfish | a. square feet | b. square feet | c. square feet | d. square feet |
| 20. <input type="checkbox"/> Fish Runs - Indicate size under Coastal Banks, inland Bank, Land Under the Ocean, and/or inland Land Under Waterbodies and Waterways, above | a. c/y dredged | b. c/y dredged | | |
| 21. <input type="checkbox"/> Land Subject to Coastal Storm Flowage | a. square feet | b. square feet | | |



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Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

MassDEP File #

091-0278

C. General Conditions Under Massachusetts Wetlands Protection Act

(only applicable to approved projects)

1. Failure to comply with all conditions stated herein, and with all related statutes and other regulatory measures, shall be deemed cause to revoke or modify this Order.
2. The Order does not grant any property rights or any exclusive privileges; it does not authorize any injury to private property or invasion of private rights.
3. This Order does not relieve the permittee or any other person of the necessity of complying with all other applicable federal, state, or local statutes, ordinances, bylaws, or regulations.
4. The work authorized hereunder shall be completed within three years from the date of this Order unless either of the following apply:
 - a. the work is a maintenance dredging project as provided for in the Act; or
 - b. the time for completion has been extended to a specified date more than three years, but less than five years, from the date of issuance. If this Order is intended to be valid for more than three years, the extension date and the special circumstances warranting the extended time period are set forth as a special condition in this Order.
5. This Order may be extended by the issuing authority for one or more periods of up to three years each upon application to the issuing authority at least 30 days prior to the expiration date of the Order.
6. If this Order constitutes an Amended Superseding Order of Conditions, this Amended Superseding Order of Conditions does not extend the issuance date of the original Final Order of Conditions and the Superseding Order will expire on _____ unless extended in writing by the Department.
7. Any fill used in connection with this project shall be clean fill. Any fill shall contain no trash, refuse, rubbish, or debris, including but not limited to lumber, bricks, plaster, wire, lath, paper, cardboard, pipe, tires, ashes, refrigerators, motor vehicles, or parts of any of the foregoing.
8. This Order is not final until all administrative appeal periods from this Order have elapsed, or if such an appeal has been taken, until all proceedings before the Department have been completed.
9. No work shall be undertaken until the Order has become final and then has been recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land upon which the proposed work is to be done. In the case of the registered land, the Final Order shall also be noted on the Land Court Certificate of Title of the owner of the land upon which the proposed work is done. The recording information shall be submitted to the Department on the form at the end of this Order, which form must be stamped by the Registry of Deeds, prior to the commencement of work.
10. A sign shall be displayed at the site not less than two square feet or more than three square feet in size bearing the words,
"Massachusetts Department of Environmental Protection" [or, "MA DEP"]



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"File Number 091-0278"

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

11. Where the Department of Environmental Protection is requested to issue a Superseding Order, the Conservation Commission shall be a party to all agency proceedings and hearings before DEP.
12. Upon completion of the work described herein, the applicant shall submit a Request for Certificate of Compliance (WPA Form 8A) to the Department of Environmental Protection.
13. The work shall conform to the plans and special conditions referenced in this order.
14. Any change to the plans identified in Condition #13 above shall require the applicant to inquire of the Department in writing whether the change is significant enough to require the filing of a new Notice of Intent.
15. The Agent or members of the Conservation Commission and the Department of Environmental Protection shall have the right to enter and inspect the area subject to this Order at reasonable hours to evaluate compliance with the conditions stated in this Order, and may require the submittal of any data deemed necessary by the Conservation Commission or Department for that evaluation.
16. This Order of Conditions shall apply to any successor in interest or successor in control of the property subject to this Order and to any contractor or other person performing work conditioned by this Order.
17. Prior to the start of work, and if the project involves work adjacent to a Bordering Vegetated Wetland, the boundary of the wetland in the vicinity of the proposed work area shall be marked by wooden stakes or flagging. Once in place, the wetland boundary markers shall be maintained until a Certificate of Compliance has been issued by the Department.
18. All sedimentation barriers shall be maintained in good repair until all disturbed areas have been fully stabilized with vegetation or other means. At no time shall sediments be deposited in a wetland or water body. During construction, the applicant or his/her designee shall inspect the erosion controls on a daily basis and shall remove accumulated sediments as needed. The applicant shall immediately control any erosion problems that occur at the site and shall also immediately notify the Department, which reserves the right to require additional erosion and/or damage prevention controls it may deem necessary. Sedimentation barriers shall serve as the limit of work unless another limit of work line has been approved by this Order.

NOTICE OF STORMWATER CONTROL AND MAINTENANCE REQUIREMENTS

19. **The work associated with this Order (the "Project") is (1) ☐ is not (2) ☒ subject to the Massachusetts Stormwater Standards. If the work is subject to the Stormwater Standards, then the project is subject to the following conditions:**



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- a) All work, including site preparation, land disturbance, construction and redevelopment, shall be implemented in accordance with the construction period pollution prevention and erosion and sedimentation control plan and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Construction General Permit as required by Stormwater Condition 8. Construction period erosion, sedimentation and pollution control measures and best management practices (BMPs) shall remain in place until the site is fully stabilized.

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- b) No stormwater runoff may be discharged to the post-construction stormwater BMPs unless and until a Registered Professional Engineer provides a Certification that:
- i. all construction period BMPs have been removed or will be removed by a date certain specified in the Certification. For any construction period BMPs intended to be converted to post construction operation for stormwater attenuation, recharge, and/or treatment, the conversion is allowed by the MassDEP Stormwater Handbook BMP specifications and that the BMP has been properly cleaned or prepared for post construction operation, including removal of all construction period sediment trapped in inlet and outlet control structures;
 - ii. as-built final construction BMP plans are included, signed and stamped by a Registered Professional Engineer, certifying the site is fully stabilized;
 - iii. any illicit discharges to the stormwater management system have been removed, as per the requirements of Stormwater Standard 10;
 - iv. all post-construction stormwater BMPs are installed in accordance with the plans (including all planting plans) approved by the issuing authority, and have been inspected to ensure that they are not damaged and that they are in proper working condition;
 - v. any vegetation associated with post-construction BMPs is suitably established to withstand erosion.
- c) The landowner is responsible for BMP maintenance until the issuing authority is notified that another party has legally assumed responsibility for BMP maintenance. Prior to requesting a Certificate of Compliance, or Partial Certificate of Compliance, the responsible party (defined in General Condition 19(e)) shall execute and submit to the issuing authority an Operation and Maintenance Compliance Statement ("O&M Statement") for the Stormwater BMPs identifying the party responsible for implementing the stormwater BMPs Operation and Maintenance Plan ("O&M Plan") and certifying the following: i.) the O&M Plan is complete and will be implemented upon receipt of the Certificate of Compliance, and ii.) the future responsible parties shall be notified in writing of their ongoing legal responsibility to operate and maintain the stormwater management BMPs and implement the Stormwater Pollution Prevention Plan.
- d) Post-construction pollution prevention and source control shall be implemented in accordance with the long-term pollution prevention plan section of the approved Stormwater Report and, if applicable, the Stormwater Pollution Prevention Plan required by the National Pollution Discharge Elimination System Multi-Sector General Permit.
- e) Unless and until another party accepts responsibility, the landowner, or owner of any drainage easement, assumes responsibility for maintaining each BMP. To overcome this presumption, the landowner of the property must submit to the issuing authority a legally binding agreement of record, and acceptable to the issuing authority, evidencing that another entity has accepted responsibility for maintaining the BMP, and that the proposed responsible party shall be treated as a permittee for purposes of implementing the requirements of Conditions 19(f) through 19(k) with respect to that BMP. Any failure of the proposed responsible party to implement the requirements of Conditions 19(f) through 19(k) with respect to that BMP shall be a violation of the Order of Conditions or



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Certificate of Compliance. In the case of stormwater BMPs that are serving more than one lot, the legally binding agreement shall also identify the lots that will be serviced by the stormwater BMPs. A plan and easement deed that grants the responsible party access to perform the required operation and maintenance must be submitted along with the legally binding agreement.

- f) The responsible party shall operate and maintain all stormwater BMPs in accordance with the design plans, the O&M Plan, and the requirements of the Massachusetts Stormwater Handbook.

C. General Conditions Under Massachusetts Wetlands Protection Act (cont.)

- g) The responsible party shall:
1. Maintain an operation and maintenance log for the last three (3) consecutive calendar years of inspections, repairs, maintenance and/or replacement of the stormwater management system or any part thereof, and disposal (for disposal the log shall indicate the type of material and the disposal location);
 2. Make the maintenance log available to MassDEP and the Conservation Commission ("Commission") upon request; and
 3. Allow members and agents of the MassDEP and the Commission to enter and inspect the site to evaluate and ensure that the responsible party is in compliance with the requirements for each BMP established in the O&M Plan approved by the issuing authority.
- h) All sediment or other contaminants removed from stormwater BMPs shall be disposed of in accordance with all applicable federal, state, and local laws and regulations.
- i) Illicit discharges to the stormwater management system as defined in 310 CMR 10.04 are prohibited.
- j) The stormwater management system approved in the Order of Conditions shall not be changed without the prior written approval of the issuing authority.
- k) Areas designated as qualifying pervious areas for the purpose of the Low Impact Site Design Credit (as defined in the MassDEP Stormwater Handbook, Volume 3, Chapter 1, Low Impact Development Site Design Credits) shall not be altered without the prior written approval of the issuing authority.
- l) Access for maintenance, repair, and/or replacement of BMPs shall not be withheld. Any fencing constructed around stormwater BMPs shall include access gates and shall be at least six inches above grade to allow for wildlife passage.

Brief Project Description: Construction of a single-family house, driveway, stormwater infiltration systems, landscaping and mitigation plantings.

☒ See the attached Order of Conditions containing Special Conditions 21-56 with all plan references and/or other attachments issued by the Arlington Conservation Commission (ACC) on 10/5/2017 which is hereby affirmed and made part of this decision, as **modified** by the following special conditions: 57-61



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D. Findings Under Municipal Wetlands Bylaw or Ordinance

To the extent that the Order is based on a municipal bylaw or ordinance, and not on the Massachusetts Wetlands Protection Act or regulations, the Department has no jurisdiction to supersede the local by-law order.

E. Issuance

This Order is valid for three years from the date of issuance, unless otherwise specified as a special condition pursuant to General Conditions 4 or 6.

Issued by: **Department of Environmental Protection:**

Signature:

Rachel Freed

Rachel Freed, Deputy Regional Director, BWR

FEB 09 2018

This Order is issued to the applicant as follows:

☐ by Hand delivery on:

Date

☒ by

FEB 09 2018

Date

certified mail on:



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F. Recording Information

This Order of Conditions must be recorded in the Registry of Deeds or the Land Court for the district in which the land is located, within the chain of title of the affected property. In the case of recorded land, the Final Order shall also be noted in the Registry's Grantor Index under the name of the owner of the land subject to the Order. In the case of registered land, this Order shall also be noted on the Land Court Certificate of Title of the owner of the land subject to the Order of Conditions. The recording information on Page 10 of this form shall be submitted to the Department.

Massachusetts Department of Environmental Protection – Northeast Regional Office
Issuing Authority

To: MassDEP
Issuing Authority

Please be advised that the Order of Conditions for the Project at:

88 Coolidge Road, Arlington
Project Location

091-0278
DEP File Number

Has been recorded at the Registry of Deeds of:

County

Book

Page

For: Property Owner

and has been noted in the chain of title of the affected property in:

Book

Page

In accordance with the Order of Conditions issued on:

Date

If recorded land, the instrument number identifying this transaction is:

Instrument Number

If registered land, the document number identifying this transaction is:

Document Number

Signature of Applicant



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G. Appeal Rights and Time Limits

The applicant, the landowner, any person aggrieved by the Superseding Order, Determination or other Reviewable Decision as defined at 310 CMR 10.04, who previously participated in the proceedings leading to this Reviewable Decision, the conservation commission, or any ten (10) residents of the city or town where the land is located if at least one resident was previously a participant in the permit proceeding, are hereby notified of their right to appeal this Reviewable Decision pursuant to M.G.L. c.30A, § 10, provided the request is made by certified mail or hand delivery to the Department, along with the appropriate filing fee and a MassDEP Fee Transmittal Form within ten (10) business days of the date of issuance of this Superseding Order or Determination, and addressed to:

Case Administrator
Office of Appeals and Dispute Resolution
Department of Environmental Protection
One Winter Street, 2nd Floor
Boston, MA 02108

A copy of the request (hereinafter also referred to as Appeal Notice) shall at the same time be sent by certified mail or hand delivery to the Conservation Commission, the applicant, the person that requested the Superseding Order or Determination, and the issuing office of the MassDEP at:

MassDEP – NERO
Wetlands Program
205B Lowell Street
Wilmington, MA 01887

In the event that a ten resident group requested the Superseding Order or Determination, the Appeal Notice shall be served on the designated representative of the ten resident group, whose name and contact information is included in this Reviewable Decision (when relevant).

Contents of Appeal Notice

An Appeal Notice shall comply with the Department's Rules for Adjudicatory Proceedings, 310 CMR 1.01(6) and 310 CMR 10.05(7)(j), and shall contain the following information:

- (a) the MassDEP Wetlands File Number, name of the applicant, landowner if different from applicant, and address of the project;
- (b) the complete name, mailing address, email address, and fax and telephone numbers of the party filing the Appeal Notice; if represented by consultant or counsel, the name, fax and telephone numbers, email address, and mailing address of the representative; if a ten residents group, the same information for the group's designated representative;
- (c) if the Appeal Notice is filed by a ten (10) resident group, then a demonstration of participation by at least one resident in the previous proceedings that led to this Reviewable Decision;
- (d) if the Appeal Notice is filed by an aggrieved person, then a demonstration of participation in the previous proceeding that led to this Reviewable Decision and sufficient written facts to demonstrate status as a person aggrieved;
- (e) the names, telephone and fax numbers, email addresses, and mailing addresses of all other interested parties, if known;



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- (f) a clear and concise statement of the alleged errors contained in the Department's decision and how each alleged error is inconsistent with 310 CMR 10.00 and does not contribute to the protection of the interests identified in the Wetlands Protection Act, M.G.L. c. 131, § 40, including reference to the statutory or regulatory provisions that the party filing the Appeal Notice alleges has been violated by the Department's Decision, and the relief sought, including any specific desired changes to the Department's decision;
- (g) a copy of the Department's Reviewable Decision that is being appealed and a copy of the underlying Conservation Commission decision if the Reviewable Decision affirms the Conservation Commission decision;
- (h) a statement that a copy of the request has been sent by certified mail or hand delivery to the applicant and the conservation commission; and
- (i) if asserting a matter that is Major and Complex, as defined at 310 CMR 10.04(1), a statement requesting that the Presiding Officer make a designation of Major and Complex, with specific reasons supporting the request.

Filing Fee and Address

A copy of the Appeal Notice along with a MassDEP Fee Transmittal Form and a valid check or money order payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Commonwealth of Massachusetts
Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

SUPERSEDING ORDER OF CONDITIONS
DEP File Number 091-0278

Special Conditions

See the attached Order of Conditions containing Special Conditions 21-56 with all plan references and/or other attachments, issued by the Arlington Conservation Commission on October 5, 2017, which is hereby affirmed and made part of this decision as modified by the following special conditions:

57. All submittals shall be made to MassDEP and copied to the Conservation Commission.
58. This Superseding Order of Conditions cannot enforce any conditions pursuant to the Arlington Bylaw for Wetlands Protection.
59. Plans entitled "Drainage/Grading Plan," 1 sheet, prepared for Jonathan Nyberg, prepared by Gala Simon Associates, Inc., last revised 8/7/2017, signed and stamped by Alberto M. Gala, RPE.
60. Members and agents of the Conservation Commission and MassDEP shall have the right to enter and inspect the premises to evaluate compliance with the conditions stated in this Superseding Order, and may require the submittal of any data deemed necessary by MassDEP for that evaluation.
61. Pursuant to and in addition to the Special Conditions contained in the Order of Conditions, dated October 5, 2017, upon completion of the project, the applicant shall submit a request for a Certificate of Compliance with an affidavit prepared by a professional engineer or land surveyor registered in the Commonwealth of Massachusetts, stating that the site subject to the Superseding Order of Conditions has been developed in accordance with the requirements of this SOC, based upon an on-site inspection and the referenced site plans. Additionally, the applicant shall submit an as-built plan prepared by a registered professional engineer or land surveyor of the Commonwealth, for all work that has been proposed within the area of MassDEP's jurisdiction within the site subject to the SOC. Such plan shall indicate in a clear manner the final and actual conditions of the site.

while the proposed Project will alter Resource Areas under the Act and Bylaw, the work as conditioned will not have significant or cumulative effects upon the interests of the Wetlands Protection Act or the Resource Area values of the Arlington Wetlands Bylaw, and the conditions imposed, including erosion controls and excavation monitoring during construction, re-vegetation planting plan, invasive plant management, and stormwater management plans will protect the Resource Area values. With the conditions contained herein, the Project meets the performance standards in the Bylaw Regulations and state Wetlands Regulations, 310 CMR 10.00.

- N. The Commission points out that the 88 Coolidge project is different from those it denied for houses at 47 Spy Pond Lane (DEP File # 91-278) for a number of reasons, including but not limited to:
- 47 Spy Pond Lane was a much larger lot (or even as two lots) and had room beyond the AURA to accommodate house(s), and even room within the existing impervious surface footprints for houses.
 - The 88 Coolidge project offers a more robust and greater amount (proportionally to overall lot size(s)) of mitigation planting than was offered for the much larger 47 Spy Pond Lot.
 - The 88 Coolidge lot does not currently provide superior wildlife habitat as it is not contiguous to any other substantially natural areas (i.e. it has houses all around it); whereas Spy Pond is itself a larger robust wildlife area with which 47 Spy Pond Lane is contiguous.

Additional Special Conditions

In addition to the General Conditions (numbered 1 – 20 above), the Project is subject to the following Additional Special Conditions (under both the Act and Bylaw):

21. Work permitted by this Order and Permit shall conform to the Notice of Intent, latest plans and documents (listed above), and oral representations (as recorded in hearing minutes) submitted or made by the Applicant and the Applicant's agents or representatives, as well as any plans and other data, information or representations submitted per these Conditions and approved by the Commission.
22. The provisions of this Order and Permit shall apply to and be binding upon the Applicant and Applicant's assigns, tenants, employees, contractors, and agents.
23. No work shall be started under this Order until: (a) all other required permits or approvals have been obtained and (b) the appeal period of ten (10) business days from the date of issue of this Order has expired without any appeal being filed. No work shall be started under this Permit until all other necessary permits or approvals have been obtained.
24. The Applicant shall ensure that a copy of this Order of Conditions and Permit for work, with any referenced plans, is available on site at all times, and that contractors, site managers, foremen, and sub-contractors understand its provisions.

25. Prior to starting work, the Applicant shall submit to the Commission the names and 24-hour phone numbers of numbers of project managers or the persons responsible for site work or mitigation.
26. Before work begins, erosion and sediment controls shall be installed at the limits of the work area. These will include a silt fence and straw wattle or staked strawbales around the entire work area (haybales are not allowed).
27. The contractor shall contact the Conservation Administrator (ConComm@town.arlington.ma.us; 781-316-3012) to arrange for a site walk to confirm the installation and placement of erosion controls prior to the start of any grading or construction work.
28. All dumpsters must be covered at the end of each work day, and no dumpsters will be allowed overnight within the 100 foot Buffer Zone or Adjacent Upland Resource Areas or other Resource Areas.
29. No uncovered stockpiling of materials shall be permitted overnight within 100 feet of any waterway or water body. *The area shown on the plans for stockpiling is permitted.*
30. Areas that are disturbed by construction and access activities shall as soon as possible be brought to final grade and reseeded and restabilized, and shall be done so prior to the removal of the erosion control barrier.
31. Arrangements shall be made for dewatering, for any rinsing of tools, equipment, etc. associated with on-site mixing or use of concrete or other materials. In no case may this be placed in stormdrains without prior settling of fines. Any spillage of materials shall be cleaned up promptly.
32. Any dirt or debris spilled or tracked onto any paved streets shall be swept up and removed daily.
33. In the event of discovery of hazardous materials on the site during excavation work, clean up of these materials shall conform to the requirements and standards of State law and regulations.
34. No heavy equipment may be stored overnight within 50 feet of the wetland and no refueling or maintenance of machinery shall be allowed within the 100-foot Buffer Zone or within any Resource Area.
35. The Commission, its employees and its agents shall have the right of entry onto the site to inspect for compliance with the terms of this Order of Conditions and Permit.
36. When requesting a Certificate of Compliance for this Order of Conditions, the Applicant must submit a written statement from a Massachusetts professional engineer, registered land surveyor, or registered landscape architect certifying that the completed work complies with the

plans referenced in this Order, or provide an as-built plan and statement describing any differences.

37. The Applicant shall use clean fill consisting of sandy-silt with 85% compaction, and at least seven (7) days prior to bringing fill onto the project site, the Applicant shall notify the Commission and submit to the Commission cut sheets that specify the soil composition and source of the fill.
38. At least twenty-one (21) days before commencement of any excavation, the Applicant shall submit to the Commission for its review and approval design plans and structural design plans, both plans stamped by a professional engineer, for the retaining wall proposed for the southeast side of the dwelling that is to have a minimum of 6 inches crushed stone.
39. No bedrock shall be removed by any means. No blasting, chipping, or fracturing of bedrock is allowed. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
40. No part of the house foundation shall rest on bedrock. A minimum of eight (8) inches depth of crushed stone must be placed under the entire house foundation.
41. To avoid groundwater damming, the house foundation shall not be pinned to bedrock.
42. The "Excavation Monitor" and "Environmental Monitor" in these Special Conditions shall be selected and hired pursuant to the procedures in G.L. Ch. 44, § 53G and the Commission's implementing regulations, and no work may commence or be conducted until and unless both the "Excavation Monitor" and "Excavation Monitor" are hired (meaning their contract and any amendment thereto with the Town of Arlington is approved and thus are available to perform their work).
43. The Applicant shall pay for an independent professional "Excavation Monitor" selected by the Commission to be on site at all times during excavation activities for the house foundation, retaining walls, driveway, and storm water infiltration units and shall remain on site until each is backfilled. No such excavation activities shall occur without the Excavation Monitor present unless permitted by the Commission or its Agent. This Excavation Monitor shall be a hydrogeologist or hydrologist and a Massachusetts Professional Engineer. The Excavation Monitor shall monitor the excavation activities and notify the Commission immediately of any deviation from the Order of Conditions (including project plans and related documents), and, in particular, shall:
 - a. Observe the excavation activities to look for any sign of water entering the excavation from the side walls or from below; and.
 - b. Observe the excavation activities to note if any bedrock is encountered at a depth shallower than shown on the revised Project Plan C-1.

In any event, the Excavation Monitor shall provide the Commission after backfilling of excavation a final report via email with photographs on any unexpected circumstances encountered, including but not limited to bedrock and/or water during excavation (see a. and b. above), and any minor project changes that comply with the terms and conditions of this Order

of Conditions. The Excavation Monitor shall note and report to the Commission any of the events described above and shall have the authority to stop work. Work should not resume until a resolution of the observed problem is agreed upon by the Applicant and the Commission with input from the Excavation Monitor.

44. The Applicant shall pay for an independent professional "Environmental Monitor" selected by the Commission to be on site to monitor the Project during all construction and planting work. This Environmental Monitor shall be qualified by experience and education to undertake such monitoring, as determined by the Commission. The Environmental Monitor shall be on site a minimum of once weekly and after any rainfall event of greater than 0.10 inches (over 24 hours) or as requested by the Commission. The Environmental Monitor shall provide the Commission with reports at least weekly via email with photographs of progress as well as more frequent reports on inspection and discovery and resolution of any non-compliance with the conditions in this Order of Conditions. The Environmental Monitor shall have the authority to stop work until any noncompliance is resolved. In addition to the foregoing duties and responsibilities, the Environmental Monitor shall:
- a. Ensure that erosion controls are in place and that best management practices called for in the project documents are followed;
 - b. Give attention to the eastern edge of the work area to make sure there is no discharge of water or soil toward the wetland;
 - c. Give attention to the southeastern property line, to ensure there is no discharge of soil or water toward the abutting property(ies) on Mt. Vernon Street;
 - d. Report any damage to trees;
 - e. Prior to backfilling, inspect and verify that infiltration units are installed properly with the required depths;
 - f. Check that crushed stone below the house foundation is the required 8-inch depth; and
 - g. Check that the plants are planted pursuant to the mitigation planting plan ("Invasive Species Management & Buffer Zone Restoration Planting Plan" by LEC revised thru July 24, 2017).
45. If bedrock elevation is discovered to be higher than represented in the project plans and documents, work shall immediately stop, the Applicant shall immediately notify the Commission, and if the Applicant wishes to continue with the work, shall apply for an Amended Order of Conditions if:
- a. Bedrock elevation prevents a minimum separation of 4 feet between bedrock and the bottom of the Cultec infiltration units;
 - b. Bedrock elevation prevents a minimum separation of 4 feet between bedrock and the pervious pavement system;
 - c. Bedrock elevation prevents a minimum separation of 8 inches between bedrock and the bottom house foundation; or
 - d. Bedrock elevation prevents a minimum separation of 6 inches between bedrock and the bottom of the retaining wall on the eastern side of the house.
46. If the excavation work causes an upward flow of groundwater, work shall immediately stop and measures shall be implemented to contain the flow, and the Applicant shall consult with the Excavation Monitor to determine whether a minor field change can be made that complies with

the terms and conditions of this Order of Conditions, and, if so, work may proceed upon immediate oral and written notification of the Conservation Commission. If such a minor field change is not feasible, the Applicant stop work and shall apply for an Amended Order with the knowledge that there is no right to an Amended Order.

47. Pursuant to DEP Wetlands Program policy 85-4-Amended Orders, an amended order is appropriate only for changes that are relatively minor and will have unchanged or less impacts on the interests protected by the Act and Bylaw. The Commission shall determine whether the proposed project change results in the project continuing to meet relevant performance standards, and whether the potential for adverse impacts to the protected statutory interests of the Bylaw and Act will be increased. Relatively minor changes which result in the same or decreased impact on the interests protected by the Act and Bylaw are appropriate for amendments. If the Commission determines that the proposed change would result in a project that is closer to resource areas, triggers new regulatory performance standards, meets such standards to a lesser degree, or that the interests specified in the Wetlands Protection Act or Bylaw are protected less, then the Commission shall not issue the amendment, but require the filing of a new Notice of Intent.
48. A certified arborist shall be hired by the Applicant to be on-site during construction of all retaining walls to insure protection of surrounding trees and shall report to the Commission any damage to trees that the certified arborist deems significant to the short term or long term health of the tree(s).
49. The Restoration Area of approximately 2,500 square feet shall be maintained in compliance with the "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA. The restoration area shall maintain a minimum of 75% coverage by native plants. Replacement plants shall be installed as needed due to mortality. Invasive species shall be removed. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
50. Any plantings and landscaping within the 100-foot Buffer Zone and AURA shall conform to the Invasive Species Management & Buffer Zone Restoration Planting Plan, and the following:
 - a. No plant materials shall be used of any species which appears on the Massachusetts Prohibited Plant list at <http://www.mass.gov/agr/farmproducts/prohibitedplantlist.htm>
 - b. Fertilizers, pesticides, or herbicides shall not be used within the Buffer Zone/AURA except as noted in (c) unless a specific need for treating a particular specimen or species has been demonstrated to the Commission, and permission has been granted.
 - c. Fertilizers may be used at the time of installation of any plant materials, and once more within a year after planting.
51. The "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA shall be recorded as an exhibit with this Order of Conditions and any Certificate of Compliance.

52. The restoration area and management of invasive species shall be monitored for a period of three years, with annual reports submitted to the Conservation Commission for each growing season no later than December 15 of each year. Invasive species shall continue to be removed during the monitoring period.
53. To prevent encroachment, signs reading "Conservation Area – Do Not Disturb" shall be installed and maintained along the edge of the restoration planting area in the locations shown on "Invasive Species Management & Buffer Zone Restoration Planting Plan – 88 Coolidge Road, Arlington, MA", October 21, 2016, revised through July 24, 2017, by LEC of Worcester MA. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
54. Stormwater drainage systems shall be maintained in accordance with the "Operation and Maintenance Plan for Drainage Systems – Lot A Coolidge Road, Arlington, MA" dated June 3, 2016, revised through August 17, 2017. No components may be replaced without the permission of the Conservation Commission. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
55. Curb (such as "Cape Cod berm") at driveway shall be maintained in perpetuity to minimize surface water flow from street entering property. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**
56. Pervious surfaces shown on the project plans shall be maintained and not replaced by impervious surfaces. **This shall be a continuing condition that survives the expiration of the permit and shall be included in any Certificate of Compliance as a continuing condition.**

EXHIBIT

C

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Superior Court Department
Civil Action No.

JUSTINE COVAULT, BRUCE WHELTLE,
and FREDERIK HEGER,

Plaintiffs,

v.

THE TOWN OF ARLINGTON
CONSERVATION COMMISSION and
JONATHAN NYBERG,

Defendants.

COMPLAINT

1. Pursuant to General Laws Chapter 249, §4, the plaintiffs appeal a decision by the defendant Town of Arlington Conservation Commission (the “Conservation Commission”) issuing an Order of Conditions dated October 5, 2017 under the Town of Arlington Wetlands Protection Bylaw (the “Bylaw”) and the Town of Arlington Wetlands Protection Regulations (the “Regulations”) to Jonathan Nyberg (the “Developer”), approving a new single-family home and associated driveway, retaining walls and stormwater management system (the proposed “Project”) on currently undeveloped land known alternatively as “Lot A” or 88 Coolidge Road in Arlington, Massachusetts (the “Site”). The Site is located almost entirely within the Adjacent Upland Resource Area, which is protected as a resource area under the Bylaw and the Regulations.

2. The proposed Project fails to comply with the requirements in the Bylaw and the Regulations. A true and accurate copy of the Conservation Commission’s Order of Conditions (“OOC”) is attached to this Complaint as Exhibit A.

Parties

3. The plaintiff Justine Covault owns and resides at 86 Coolidge Road, Arlington, Massachusetts. She is a direct abutter to the Site and is aggrieved by the Commission's OOC.

4. The plaintiff Bruce Whelple owns and resides at 94 Coolidge Road, Arlington, Massachusetts. He is a direct abutter to the Site and is aggrieved by the Commission's OOC.

5. The plaintiff Frederik Heger owns and resides at 169 Mt. Vernon Street, Arlington, Massachusetts. He is a direct abutter to the Site and is aggrieved by the Commission's OOC.

6. The defendant Arlington Conservation Commission is the duly constituted Conservation Commission of the Town of Arlington, Massachusetts, with a place of business at Arlington Town Hall, 730 Massachusetts Avenue, Annex, Arlington, Massachusetts 02476.

7. The defendant Jonathan Nyberg is the Applicant for the OOC and the record owner of the Site. He has a mailing address of P.O. Box 292, Arlington, Massachusetts 02476.

Facts

A. The Site

8. In 2012, the Site was part of a larger parcel of land owned by the Stiles Investment Trust (the "Trust"). The larger parcel, known as 86 Coolidge Road, contained one single-family house.

9. In 2012, the Trust divided 86 Coolidge Road into Lots A, B, C, and D. The Site is shown as "Lot A" on that subdivision plan.

10. Almost all of Lot A is within the 100-foot Adjacent Upland Resource Area.

11. In 2015, the Trust sold Lot A to the Developer.

12. On June 30, 2016, the Developer filed a Notice of Intent with the Conservation Commission seeking permission under the Massachusetts Wetlands Protection Act, G.L. c. 131, §40 (the “Act”) and the Town of Arlington Wetlands Protection Bylaw and Regulations to construct a new house and associated infrastructure on the Site.

13. The Site currently consists of undeveloped woodlands located almost entirely within the 100-foot Adjacent Upland Resource Area (“AURA”), which is protected as a resource area under the Bylaw and the Regulations.

14. The proposed house would be located 51.8 feet from Bordering Vegetated Wetlands (“BVW”) and Bank associated with an intermittent stream on neighboring property.

15. The proposed house, driveway, and associated walkway would create 1,772 square feet of new impervious surfaces at the Site.

16. Since the Site is undeveloped woodlands, it currently has no impervious surfaces.

17. The proposed Project also includes installation of stormwater management apparatus, construction of retaining walls, and removal and cutting of existing natural vegetation within the protected 100-foot Adjacent Upland Resource Area.

18. After multiple hearings, the Conservation Commission voted on September 7, 2017 to approve the proposed Project with conditions under the Act, Bylaw and Regulations. On October 5, 2017, the Conservation Commission issued its written Order of Conditions (“OOC”) under the Act and the Bylaw.

B. The Bylaw and Regulations.

19. The Arlington Wetlands Bylaw and Regulations contain provisions that are more stringent than the state Act.

1. **Protection of the AURA.**

20. Section 2.A.(5) of the Regulations states that any land area bordering within 100 feet of a stream or bank is itself a jurisdictional resource area protected under the Bylaw. The Regulations refer to this 100-foot bordering area as the “Adjacent Upland Resource Area.” See Regulations, Section 4.B.(3), (11) and (13), and Section 25.B.

21. Section 25.A.(1) of the Regulations finds that: “The Adjacent Upland Resource Area usually is significant to wildlife, plant or wildlife habitat, to public and private water supply, to groundwater supply, to flood control, to storm damage prevention, to prevention of pollution, to erosion control and sedimentation control, and to natural character and recreation.”

22. Section 25.A.(2) of the Regulations discusses the importance of maintaining trees in the Adjacent Upland Resource Area, stating that: “Trees in the Adjacent Upland Resource Area provide important functions not provided by any other plant type. Trees provide shade to moderate water temperatures, levels of dissolved oxygen and water flow. They serve as windbreaks to moderate wind stress and shear during storms, and provide nesting, roosting and perching areas for birds, and other wildlife. The transitional assemblage of trees, shrubs and groundcover (containing both wetland and upland elements) frequently found in Adjacent Upland Resource Areas has been found significant to the support of a greater number of native and specialist wildlife species in the interior of resource areas, which they border. Trees and other vegetation, if undisturbed or minimally disturbed, slow the rate of surface runoff providing flood control and reducing down-gradient storm damage.”

23. Section 25.A.(3) of the Regulations finds that: “Lands within the Adjacent Upland Resource Area are best left in an undisturbed and natural state.”

24. Section 25.A.(4) of the Regulations finds that: “There is overwhelming scientific consensus that significant physical, chemical, or biological alterations to Adjacent Upland Resource Areas will have significant physical, chemical, or biological impacts on associated or adjacent wetland resource areas such as banks, creeks, streams, rivers, ponds, lakes, and wetlands. Adjacent Upland Resource Areas are presumed important to the protection of these resources because activities undertaken in close proximity to wetlands and other resource areas protected by the Bylaw have a high likelihood of adverse impact upon those areas, either immediately, as a consequence of construction, or over time, as a consequence of daily operation or existence of the activities. These adverse impacts from construction and use can include, without limitation, erosion, siltation, loss of groundwater recharge, loss of flood control or storm damage prevention, poor water quality, and harm to wildlife and wildlife habitat. The ability of the Adjacent Upland Resource Area to protect a wetland resource, and to provide habitat, increases with buffer width and continuity.” (Emphasis added.)

25. The Regulations at Section 25.B-D. further divide the 100-foot Adjacent Upland Resource Area into a 25-foot No-Disturbance Zone and a 75-foot Restricted Zone. At Section 25.D., the Regulations state that for the 75-foot Restricted Zone: “A growing body of research evidence suggests that even ‘no disturbance’ areas reaching beyond 25 feet from wetlands, streams, rivers, and other water bodies may be insufficient to protect many important characteristics and values. Problems of nutrient runoff, water pollution, siltation, erosion, vegetation change, and habitat destruction are greatly exacerbated by activities within 100 feet of wetlands.”

26. In accordance with the Regulations’ extensive findings on the sensitivity of the Adjacent Upland Resource Area, Section 25.D imposes a burden of proof on any Applicant:

“work and activity within that portion of the Adjacent Upland Resource Area beyond the No-Disturbance Zone shall be avoided and discouraged and reasonable alternatives pursued.” It further provides that only “[w]hen the Applicant proves that reasonable alternatives are not available or practicable, the Commission shall designate areas of the Adjacent Upland Resource Area to be suitable for no, temporary, limited, or permanent disturbance as appropriate depending on the ... particular characteristics of the Restricted Zone....”

27. The Commission’s OOC was arbitrary and capricious and unsupported by substantial evidence, because the Developer could not prove that “reasonable alternatives are not available or practicable” to building within the 75-foot Restricted Zone of the Adjacent Upland Resource Area, where a “reasonable alternative” would have been to have kept Lot A with the adjacent property at 86 Coolidge Road which contained a pre-existing single-family house.

28. Accordingly, the Trust’s decision to divide Lot A from the larger property amounts to a “self-created hardship” that binds the Developer as the successor-in-title, and that prevents the Commission from granting any relief from the strict protections of the AURA under the Bylaw and Regulations which provide, in part, that: “Lands within the Adjacent Upland Resource Area are best left in an undisturbed and natural state. See Regulations, 25.A.(3).

29. The Commission’s OOC was arbitrary and capricious and unsupported by substantial evidence, because the Developer’s December 2, 2016 “alternatives analysis” also failed to consider the reasonable alternative of building a smaller house on the property, so that the least possible amount of the AURA would be disturbed.

30. Where the Commission was provided with evidence that plaintiff Justine Covault’s abutting house at 86 Coolidge Road (Lot B), on a smaller sized lot, with comparable sloping topography and a footprint of only 576 square feet sold for \$722,000 in February 2016,

the Commission's determination that "no other reasonable alternatives [to constructing a house with a footprint of 1,305 square feet] were available or practicable for work in the AURA" was based on legally untenable ground and is arbitrary and capricious. See OOC, Finding J.

31. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because it treated the AURA associated with Lot A/88 Coolidge Road differently, and with a lesser degree of protection, than how it regulated AURA in prior decisions, including its October 26, 2016 Denials for 47 Spy Pond Lane, which are referenced in the OOC. See Arlington Conservation Commission, Denial Order of Conditions, 47 Spy Pond Lane, Lots A(1) and B(2), DEP File Nos. 91-275 and 91-276, Findings of Fact and Law number 14, attached hereto as Exhibit B.

32. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because its Denial Order of Conditions for 47 Spy Pond Lane was based in part on the Applicant's "self-created hardship" of dividing land within the AURA into two lots, but the Commission ignored the self-created hardship caused by the Trust's division of 86 Coolidge into four Lots within the AURA when considering the Developer's alternatives analysis. See Exhibit B, Findings of Fact and Law number 13.

2. Protection of Surrounding Land and Other Homes or Buildings.

33. Section 1. (Purpose) of the Bylaw states that: "The purpose of this Wetlands Protection Bylaw is to protect the wetlands, water resources, and adjoining land areas in Arlington by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon resource area values, including but not limited to, ... protection of surrounding land and other homes or buildings,..." (emphasis added).

34. Due to the unique topography and history of flooding in the vicinity, the Conservation Commission retained James Vernon, Ph.D. of Nobis Engineering, Inc. ("Nobis") to conduct an independent hydrogeologic peer review of the proposed Project. Mr. Vernon's Final Report dated July 24, 2017 concluded that "[p]resent information is insufficient to justify, with certainty, a conclusion that the house can be constructed 'safely', with minimal risk of negative impacts. Site conditions and anecdotal impacts of other projects at nearby sites justify concern for the present project." See Nobis Report, p. 14.

35. Nobis found that the proposed work could impact the stream, and could cause flooding to neighboring properties. Nobis stated that "[e]xcavation for the new home could possibly alter subsurface flows to either increase or decrease flow in the stream...." Nobis Report, p. 10.

36. Nobis also found that the proposed removal of trees within the AURA "can be expected to alter the water budget for the property, resulting in an increase in the amount of water that remains in the ground following infiltration of rainwater." Nobis Report, p. 6.

37. The Nobis Report concluded that the proposed project could put abutters at risk, stating that: "Removal of soil during excavation for the foundation may eliminate confinement to groundwater flowing through shallow bedrock fractures, causing groundwater to emerge into the basement of the new house or to discharge to the ground surface or into the soil outside the house. This could cause surface water flow or shallow groundwater flow in soils, exiting the southeast (downgradient) side of the property. This could cause flooding or wet spots in the back yards of homes on Mt. Vernon Street." See Nobis Report, p. 10.

38. Nobis further found that: "If dense, confining overburden material is removed, water in bedrock fractures that is under artesian pressure could be released creating flow into the

new basement. If this water flow is significant, it will presumably be discharged and flow on the surface or in the shallow subsurface southeastward toward Mt. Vernon Street.” Nobis Report, p. 14.

39. The Commission’s OOC fails to protect “surrounding land and other homes or buildings” owned by the Plaintiffs, in violation of the Commission’s duty owed to them under Section 1 of the Bylaw.

40. Plaintiff Frederik Heger owns and resides with his family at 169 Mt. Vernon Street, which abuts the Site to the rear and is directly downgradient from it.

41. As confirmed by the Nobis Report, if the proposed Project is constructed, Mr. Heger’s property is at risk from flooding, wet spots, and alterations in the surface and subsurface flow of water that could negatively impact his land and home. Accordingly, Mr. Heger is at risk of substantial injury or manifest injustice from the Commission’s OOC.

42. Plaintiff Justine Covault owns and resides with her family at 86 Coolidge Road, which abuts the Site to the southeast. The headwaters of the intermittent stream associated with the AURA originate from a rock outcropping on her property, in immediate proximity to the foundation of her house.

43. As confirmed by the Nobis Report, Ms. Covault’s property is at risk due to potential alterations of subsurface flows that could either increase or decrease flow in the stream in immediate proximity to the foundation of her house. She is also at risk due to flooding, wet spots and alterations in the surface and subsurface flow of water that could negatively impact her land and home. Accordingly, Ms. Covault is at risk of substantial injury or manifest injustice from the Commission’s OOC.

44. Plaintiff Bruce Wheltle owns and resides with his family at 94 Coolidge Road, which abuts the Site to the southwest. The Commission's OOC authorizes construction of a 10-foot high retaining wall that would be located either immediately adjacent to or on top of retaining walls owned by Mr. Wheltle.

45. The Developer's proposed 10-foot high retaining wall would prevent Mr. Wheltle from accessing his retaining walls and his property. Accordingly, Mr. Wheltle is at risk of substantial injury or manifest injustice from the Commission's OOC.

3. Protection of Trees and Vegetation

46. Section 24.A. of the Regulations finds that: "Vegetation in a resource area protected by the Bylaw is significant for wildlife, wildlife habitat and water quality. In addition, vegetation controls flood and storm damage. Vegetation provides food, shelter, socialization, shade, water detention, sediment control, bank stabilization, biodiversity, pollutant uptake, evapotranspiration of water, aesthetics, and atmospheric purification. In addition, plant size ordinarily is proportional to habitat value; i.e., large wooded trees are of greatest habitat value, followed by bushes, and then ground cover. Thus, an adequate quantity of vegetation must be maintained so that resource areas protected by the Bylaw can provide the resource area values protected by the Bylaw, including, but not limited to: flood control, storm damage prevention, pollution abatement, wildlife protection, aesthetic value, and recreation." (Emphasis added).

47. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because it authorizes the removal or extensive pruning of large wooded trees that provide the greatest habitat value in the protected AURA, without justification.

48. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because it failed to apply the factors for removal of vegetation in Section 24.D through 24.E of the Regulations.

49. Ms. Covault's property at 86 Coolidge Road contains a mature Northern Red oak tree with an approximately 30-inch diameter trunk that is located close to the property line with Lot A/88 Coolidge Road. The oak tree is entirely within the protected AURA.

50. The Commission's OOC approves the pruning of up to 20 percent of the canopy of Ms. Covault's oak tree, and further authorizes extensive cutting of the tree's roots to make way for the proposed Project. This proposed work will compromise the health of the tree and put it at risk of death, which would negatively impact Ms. Covault's property. Accordingly, Ms. Covault is at risk of substantial injury or manifest injustice from the Commission's OOC.

4. Protection of Wildlife Habitat

51. Section 30 of the Regulations provides that "Activities which alter the Wildlife Habitat of any Resource Area in a manner that is likely to impact the breeding success of wildlife are prohibited."

52. Regulation Section 4.B.(71) defines "Wildlife" as "Any non-domesticated mammal, bird, reptile, amphibian, fish mollusk, arthropod or other invertebrate." Regulation Section 4.B.(72) defines "Wildlife Habitat" as "the area being used by or necessary to provide breeding or nesting habitat, shelter, food and water for any animal species."

53. Lot A/88 Coolidge Road currently provides Wildlife Habitat, including nesting and breeding habitat, for numerous species of birds, mammals including squirrels, raccoons, skunks, mice and chipmunks, and amphibians such as red-backed salamanders. Documentary evidence provided to the Commission shows that the property provides superior wildlife habitat.

54. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because it authorizes activities which alter wildlife habitat in the AURA in a manner that is likely to impact the breeding success of wildlife by: permitting permanent physical structures in the 75-foot Restricted Area of the AURA; creating 1,772 square feet of impervious surfaces on previously undeveloped land; removing mature shade trees; blocking movement of wildlife with multiple retaining walls; and by intensifying human activity in the area, all of which are likely to impact the "breeding success" of wildlife in violation of Section 30 of the Regulations.

55. The Commission's OOC was arbitrary and capricious and unsupported by substantial evidence, because it treated Wildlife Habitat associated with Lot A/88 Coolidge Road differently, and with a lesser degree of protection, from the manner in which it regulated Wildlife Habitat in prior decisions, including its October 26, 2016 Denials for 47 Spy Pond Lane. See Exhibit B.

5. Failure to Meet Burden of Proof

56. Section 3.B. of the Regulations provides that: "The applicant shall have the burden of proving by a preponderance of the credible evidence from a competent source that the work in the application will not have a significant or cumulative effect upon the wetland values protected by the Bylaw."

57. Under Section 4.B.(21) of the Regulations, "Cumulative Effect" means an effect that is significant when considered in combination with other activities that have occurred, are going on simultaneously, or that are likely to occur, whether such other activities have occurred or are contemplated ..., or unrelated but reasonably foreseeable actions, including other

development projects that are currently under construction, under review or that may be expected to come forward.” (Emphasis added.)

58. The Commission’s OOC was arbitrary and capricious and unsupported by substantial evidence, because the proposed Project will have a significant or cumulative effect on Resource Area Values protected in the Bylaw and Regulations by: converting undeveloped woodlands in the AURA to impervious surfaces; altering the flow of water and preventing the AURA from functioning in its natural state; creating barriers to wildlife movement and degrading wildlife habitat; removing or harming mature trees that provide wildlife with food and habitat; causing an increase in human activity that will degrade the AURA; putting abutting properties at risk; and by failing to consider the total build-out of Lots A, C and D, that were formerly part of 86 Coolidge Road.

COUNT I
(G.L. c. 249, § 4)

59. Paragraphs 1-58 are re-alleged.

60. An action in the nature of certiorari, pursuant to G.L. c. 249, §4, “correct[s] errors in proceedings which are not according to the course of the common law, which proceedings are not otherwise reviewable by motion or appeal.”

61. The Commission’s OOC for the proposed Project violates the Arlington Wetlands Protection Bylaw and Regulations, as explained above.

62. The Commission’s OOC issued pursuant to the Arlington Wetlands Protection Bylaw and Regulations is not supported by substantial evidence, is arbitrary and capricious, exceeded the Commission’s authority, and is based upon errors of law apparent on the face of the record.

WHEREFORE, the plaintiffs request that this Court:

1. Annul the Conservation Commission's Order of Conditions issued pursuant to the Arlington Wetlands Protection Bylaw and Arlington Wetlands Protection Regulations;
2. Award the plaintiffs their costs and attorneys' fees; and
3. Award the plaintiffs such other relief as the Court deems just and equitable.

By their attorneys,


Daniel C. Hill (BBO #644885)
Elizabeth M. Pyle (BBO #647425)
of Counsel
HILL LAW
43 Thorndike Street
Cambridge, MA 02141
(617) 494-8300
dhill@danhilllaw.com
elizabeth.m.pyle@gmail.com

Dated: October 20, 2017

EXHIBIT

D



October 27, 2017

BY HAND DELIVERY

Clerk
Land Court
Three Pemberton Square
Boston, MA 02108

Re: R. Bruce Whittle et al. v. Jonathan Nyberg et al.

Dear Sir or Madam:

Please find enclosed an original Complaint, Civil Cover Sheet, and a check for \$265 to cover the filing fees and the cost for two summonses. Please issue two blank summonses for return with our messenger.

Thank you for your attention to this matter.

Very truly yours,

Elizabeth M. Pyle

Enclosures

**Commonwealth of Massachusetts
Land Court
Department of the Trial Court**

Case No. _____

Civil Cover Sheet

First Plaintiff R. Bruce Wheltle First Defendant Jonathan Nyberg

Locus Address/Description 88 Coolidge Road City/Town Arlington

Instructions

Part I - To Be Completed by Plaintiff(s)' Counsel:

FOR ALL MISCELLANEOUS CASES (EXCEPT cases filed pursuant to Servicemembers Civil Relief Act):

1. Using the list below, please number, with the **Number 1**, the main cause of action on which you base your complaint.
- and
2. Place an "X" next to each other cause of action in your complaint.
- and
3. Is this complaint verified ? ☒ Yes ☐ No
- and
4. Are there any related cases filed in the Land Court Department ? ☐ Yes ☒ No
- If yes, please provide the Case No.(s) : _____

| | | |
|---|-----|--------------------------------------------------------------------|
| | ZAC | Appeal from Zoning/Planning Board G. L. c. 40A, § 17 |
| | ZAD | Appeal from Planning Board G. L. c. 41, § 81BB |
| | ZJA | Validity of Zoning G. L. cc. 240, § 14A, 185, § 1 (j ½) |
| | ZEN | Enforcement of Zoning G. L. c. 40A, § 7 |
| x | COT | Remove Cloud on Title G. L. c. 240, § 6 - 10 |
| | DOM | Discharge of Old Mortgage G. L. c. 240, § 15 |
| | LVT | Affirm Tax Foreclosure - Land of Low Value - G. L. c. 60, § 80B |
| | MTB | Try Title G. L. c. 240, § 1 - 5 |
| | MWA | Recover Freehold Estate (Writ of Entry) - G. L. c. 237 |
| | MRC | Determine Validity of Encumbrances G. L. c. 240, § 11 - 14 |
| | CER | Enforce Restrictions G. L. c. 240, § 10A - 10C |

| | | |
|---|-----|---------------------------------------------------------------------------------------------|
| | MAD | Determine Fiduciary Authority G. L. c. 240, § 27 |
| | PAR | Partition G. L. c. 241 |
| | RED | Redemption G. L. c. 60, § 76 |
| | SP | Specific Performance of Contracts G. L. c. 185, § 1 (k) |
| | MBF | Determine Municipal Boundaries G. L. c. 42, § 12 |
| | MFE | Determine Boundaries of Flats G. L. c. 240, § 19 |
| | CNC | Certiorari - G. L. c. 249, § 4 |
| | MAN | Mandamus - G. L. c. 249, § 5 |
| | TRE | Trespass to Real Estate Involving Title - G. L. c. 185, § 1 (o) |
| | EQA | Equitable Action Involving Any Right, Title or Interest in Land G. L. c. 185, § 1 (k) |
| | AHA | Affordable Housing Appeal G. L. c. 40B, § 21 |
| 1 | OTA | Other |

Part II - Uniform Counsel Certificate - to be filled out by **Plaintiff(s)' Counsel** at the time of initial filing. **All other counsel** shall file within thirty (30) days of initial entry into the case, whether by answer, motion, appearance or other pleading.

FOR ALL MISCELLANEOUS CASES (EXCEPT Mortgage Foreclosures under the Servicemembers Civil Relief Act)

I am attorney-of-record for: R. Bruce Wheltle and Susan Wheltle

☒ Plaintiff ☐ Defendant in the above-entitled matter.

If Defendant(s) Attorney, please provide Case No. _____

- A. In accordance with Rule 5 of the Supreme Judicial Uniform Rules on Dispute Resolution (SJC Rule 1:18) which states in part: "... Attorneys shall: provide their clients with this information about court-connected dispute resolution; discuss with their clients the advantages and disadvantages of the various methods of dispute resolution; and certify their compliance with this requirement on the civil cover sheet or its equivalent . . ."
- B. In accordance with Land Court Standing Order 1-12, I certify that I am aware of the requirement to, "...serve a copy of the "Limited Assistance Representation (LAR) Information Sheet" upon all defendants at the same time as service of the summons, complaint, and civil cover sheet is made", and I will comply with this requirement.

I hereby certify my compliance with these requirements.

BBO# 647425


Signature of Attorney-of-Record

Date: 10/26/17

Elizabeth M. Pyle
Please Print Name

Exempt Cases: Tax Foreclosures, Mortgage Foreclosures under the Servicemembers Civil Relief Act and all cases related to original and subsequent registration under G. L. c. 185, §1.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

Land Court Department
Misc. No. _____

R. BRUCE WHELTLE and SUSAN WHELTLE,

Plaintiffs,

v.

JONATHAN NYBERG and SARA DOLAN,

Defendants

VERIFIED COMPLAINT

1. Pursuant to G.L. c. 231A, §1, plaintiffs R. Bruce and Susan Wheltle seek a declaratory judgment that they hold all right, title, and interest in a strip of land located next to their home at 94 Coolidge Road in Arlington, Massachusetts, by adverse possession. The plaintiffs further move to quiet title regarding their ownership of the strip of land at issue. Defendants Jonathan Nyberg and Sara Dolan are the record owners of the contested land.

2. The Land Court has jurisdiction to hear actions for declaratory judgment pursuant to G.L. c. 231A, §1, and to quiet title pursuant to G.L. c. 240, §§ 6-10.

Parties

3. Plaintiffs R. Bruce ("Bruce") Wheltle and Susan Wheltle own and reside at 94 Coolidge Road in Arlington, Massachusetts 02476 (the "Wheltle Property").

4. Defendants Jonathan Nyberg and Sara Dolan are the record owners of land that is known alternatively as "Lot A of 86 Coolidge Road," or as 88 Coolidge Road in Arlington, Massachusetts (hereinafter, "Lot A"). See Deed to the defendants, attached hereto as Exhibit A. On information and belief, Nyberg has a mailing address of P.O. Box 292, Arlington,

Massachusetts 02476. On information and belief, Dolan has a mailing address of 51 Robin Hood Road in Arlington, Massachusetts 02474.

Facts

5. Bruce and Susan Wheltle (the “Wheltles”) purchased the Wheltle Property on April 5, 1971, and have lived there from 1971 until the present day. See Deed to Bruce and Susan Wheltle, attached hereto as Exhibit B.

6. The Wheltle Property is also known as “Lot 42” on a plan of land entitled “Plan of Lots Arlington, Mass.” dated October 1926, by C.H. Gannett, C.E., recorded with the Middlesex South Registry of Deeds in Plan Book 388, Plan 4 (the “1926 Plan”).

7. In September 2017, the Wheltles retained certified Massachusetts Professional Land Surveyor (“PLS”) Patrick C. Garner to conduct a boundary survey of the location of the side line between their property and the abutting Lot A, which is owned by the defendants.

8. Mr. Garner is a Fellow Member of the National Society of Professional Surveyors (“NSPS”), and has been a professional land surveyor for forty years. He is the principal of Patrick C. Garner Co., Inc., located at 109 Whitney Street, in Northborough, Massachusetts.

9. On September 18, 2017 and October 3, 2017, Mr. Garner conducted the boundary survey, which affirmed the existing front and back corner for the common line between the Wheltle Property (“Lot 42”) and Lot A. The survey also documented the location of the Wheltles’ landscaping and retaining walls in the vicinity of the side boundary line. The location of the Wheltles’ walls and their relation to the boundary line between Lot 42 and Lot A is accurately shown on a plan by Patrick C. Garner Co., Inc. entitled, “Survey of Encroachments,” dated October 5, 2017, attached hereto as Exhibit C (the “Garner Survey”).

10. As shown on the Garner Survey, the northeast side of the Wheltle Property

contains a row of four walls. Three of these walls extend over the boundary line with Lot A/88 Coolidge Road, such that the walls are physically on Lot A/88 Coolidge Road. See Garner Survey, Exhibit C.

11. As shown on the Garner Survey, the wall located closest to the street is a decorative brick wall. It runs parallel to the front of the Wheltle Property within the Coolidge Road right-of-way, before turning at a right angle and extending into the frontage of both the Wheltle Property and Lot A.

12. The brick wall extends 0.52 feet over the boundary line into Lot A's frontage on Coolidge Road. See Garner Survey, Exhibit C.

13. The brick wall has existed in its present location since the Wheltles purchased the Wheltle Property in 1971.

14. As shown on the Garner Survey, a mortared fieldstone wall extends from the brick wall and runs back toward the rear of the Wheltle Property and Lot A. See Garner Survey, Exhibit C.

15. On information and belief, the mortared fieldstone wall was constructed by a prior owner of the Wheltle Property as a retaining wall. It has existed in its present location since the Wheltles purchased their property. On information and belief, it was constructed in approximately 1931.

16. As shown on the Garner Survey, a concrete masonry wall extends from the end of the mortared fieldstone wall and runs back toward the rear of the Wheltle Property and Lot A. See Garner Survey, Exhibit C.

17. On information and belief, the concrete masonry wall was also constructed by a prior owner of the Wheltle Property as a retaining wall. It has also existed in its present location

since the Wheltles purchased their property.

18. As shown on the Garner Survey, the brick wall, mortared field stone wall, and concrete masonry wall (hereinafter referred to together as the "Walls") extend across the boundary line with Lot A/88 Coolidge Road for a length of 72 feet. The maximum encroachment of the Walls across the boundary line varies between 0.1 feet and 2.4 feet, with most of the encroachment area extending an average of one foot beyond the boundary line. See Garner Survey, Existing Conditions Detail, Exhibit C.

19. As shown on the Garner Survey, the Walls encroach for at least 70 square feet across the boundary line with Lot A (hereinafter referred to as the "Encroachment Area"). See Garner Survey, Exhibit C (survey notation that Lot A has 5,965 square feet of lot area, excluding the area of the Lot 42 walls).

20. Attached as Exhibit D is a true and accurate copy of a photograph of the brick wall taken on May 17, 1981. A raised planting bed contained by railroad ties is located in front of the brick wall, within the right-of-way to Coolidge Road.

21. Attached as Exhibit E are true and accurate copies of two photographs taken in June, 1993 during the installation of a sewer line at 94 Coolidge Road. In the first photograph, Mr. Wheltle is standing in a trench that was hand-dug under the brick wall during the installation of the sewer line. In the second photograph, an excavator is parked next to the brick wall during the sewer line installation.

22. Attached as Exhibit F is a true and accurate copy of a photograph of Mr. Wheltle sitting on the brick wall in May, 1997.

23. Since at least 1971, the Walls have existed as permanent improvements to the land that occupy and appropriate the Encroachment Area for the benefit of 94 Coolidge Road, to

the exclusion of all other users. The location of the Walls has not changed since the Wheltles purchased the Wheltle Property in 1971.

24. The Walls have established the boundary of the Wheltle Property, and have fenced it in for the exclusive use of Bruce and Susan Wheltle, since at least 1971.

25. Since before 1971, the Walls have been in open and obvious plain view.

26. The Wheltles have not shared the Walls or the Encroachment Area with Lot A or 86 Coolidge Road in any manner. Rather, the Wheltles have exclusively used and maintained the Walls as part of their property since they purchased 94 Coolidge Road in 1971.

27. The Wheltles have exercised dominion and control over the Encroachment Area in an open and exclusive manner without permission of the owner of the land now known as Lot A for the last 46 years.

28. Lot A was formerly part of a larger parcel of land owned by the Stiles Investment Trust (the "Trust"). The larger parcel, known as 86 Coolidge Road, contained one single-family house.

29. On September 22, 2008, professional land surveyors David Gosselin and Associates prepared a Record Conditions Plan of Land (the "Gosselin Plan") for the Trust.

30. The Gosselin Plan shows that the Walls are located over the boundary line, such that they physically encroach on Lot A.

31. On November 24, 2009 professional land surveyor Clifford E. Rober of Rober Survey prepared a Plan of Land for the Trust showing the division of 86 Coolidge Road into Lots A, B, C and D (the "Rober Plan"). The Rober Plan was revised on July 24, 2012, and was recorded on August 15, 2012 at the Middlesex South Registry of Deeds.

32. Lot A is shown on the Rober Plan in its existing configuration. As shown on the

Rober Plan, Lot A has 60.00 feet of frontage and 6,035 square feet of lot area.

33. On November 16, 2012, Rober Survey prepared a Wall Location Plan for the Trust (the “Wall Location Plan”). The Wall Location Plan shows that the Walls are located over the boundary line, such that they physically encroach on Lot A.

34. On March 1, 2013, an attorney for TGV, LLC, of which Douglas Stiles of the Stiles Investment Trust was a member, sent the Wheltles’ attorney a letter demanding that they repair their Walls. The letter included a copy of Rober’s Wall Location Plan, and acknowledged that the Wheltles owned the Walls at issue.

35. On information and belief, the Trust sold Lot A to the Defendants in 2015, despite the Trust’s knowledge of the encroachments of the Walls.

36. On December 2, 2016, Gala Simon Associates Inc. (“GSA”) prepared an Existing Conditions and Site Preparation Plan for 88 Coolidge Road (Lot A) for Defendant Jonathan Nyberg (the “GSA Existing Conditions Plan”).

37. The GSA Existing Conditions Plan shows that the Walls are located over the boundary line, such that they physically encroach on 88 Coolidge Road.

38. GSA also prepared a Drainage/Grading Plan for Defendant Jonathan Nyberg, revised on December 2, 2016 (the “GSA Drainage/Grading Plan”).

39. The GSA Drainage/Grading Plan shows that the Walls are located over the boundary line, such that they physically encroach on 88 Coolidge Road.

COUNT I
(G.L. c. 231A, § 1)

40. The plaintiffs repeat and re-allege the factual allegations set forth in paragraphs 1-39, as if fully set forth herein.

41. Pursuant to G.L. c. 231A, § 1, the Land Court in an action for a declaratory judgment “may on appropriate proceedings make binding declarations of right, duty, status and other legal relations sought thereby, either before or after a breach or violation thereof has occurred in any case in which an actual controversy has arisen” between the parties.

42. An actual controversy exists between the parties to this action regarding the plaintiffs’ interest in the above-described Encroachment Area on Lot A/88 Coolidge Road.

43. The plaintiffs would be substantially aggrieved if the defendants used Lot A in such a manner so as to interfere with the Encroachment Area.

COUNT II
(Adverse Possession)

44. The plaintiffs repeat and re-allege the factual allegations set forth in paragraphs 1-43, as if fully set forth herein.

45. Pursuant to G.L. c. 260, § 21, the statutory period for a claim of adverse possession is twenty years.

46. The plaintiffs have used the Encroachment Area in an open, adverse, exclusive, continuous, and uninterrupted manner for more than twenty years, and hereby seek a declaration that they own the Encroachment Area by adverse possession.

COUNT III
Action to Quiet Title
(G.L. c. 240, §§6-10)

47. The plaintiffs repeat and re-allege the factual allegations set forth in paragraphs 1-46, as if fully set forth herein.

48. The plaintiffs claim rightful legal ownership of the Encroachment Area through adverse possession.

49. The plaintiffs hereby seek a declaration that they own record title to the Encroachment Area.

WHEREFORE, the plaintiffs request that this Court:

1. Declare that the plaintiffs are the owners of the Encroachment Area by adverse possession;
2. Declare that record title to the Encroachment Area belongs to the plaintiffs;
3. Award the plaintiffs such other relief as the Court deems just and equitable.


The undersigned, R. Bruce Wheltle, does hereby swear under the pains and penalties of perjury that the above allegations in paragraphs 1-7, 13, 15, 17, and 20-49 are true and accurate to his personal knowledge, unless stated to be on information and belief, in which case he states that he swears under the pains and penalties of perjury that he believes them to be true and accurate on the basis of information reasonably known to him or inferences fairly drawn therefrom.

Signed this 26th day of October, 2017,


R. Bruce Wheltle

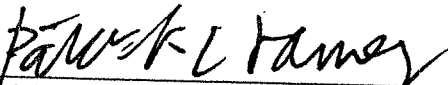
The undersigned, Susan Wheltle, does hereby swear under the pains and penalties of perjury that the above allegations in paragraphs 1-7, 13, 15, 17, and 20-49 are true and accurate to her personal knowledge, unless stated to be on information and belief, in which case she states that she swears under the pains and penalties of perjury that she believes them to be true and accurate on the basis of information reasonably known to her or inferences fairly drawn therefrom.

Signed this 26th day of October, 2017,


Susan Wheltle

The undersigned, Patrick C. Garner, does hereby swear under the pains and penalties of perjury that the above allegations in paragraphs 8-12, 14, 16, 18 and 19 are true and accurate to his personal knowledge.

Signed this 26 day of October, 2017,


Patrick C. Garner

By their attorneys,


Daniel C. Hill (BBO #644885)
Elizabeth M. Pyle (BBO #647425)
of Counsel
HILL LAW
43 Thorndike Street
Cambridge, MA 02141
(617) 494-8300
dhill@danhilllaw.com
elizabeth.m.pyle@gmail.com

Dated: October 26, 2017

EXHIBIT

E

- Case Type:
- Miscellaneous
- Case Status:
- Closed
- File Date
- 10/27/2017
- DCM Track:
-
- Initiating Action:
- OTA - Other
- Status Date:
- 08/05/2020
- Case Judge:
- Speicher, Hon. Howard P.
- Next Event:
-
-

Property Information

88 Coolidge Road
Arlington

[All Information](#) | [Party](#) | [Event](#) | [Docket](#) | [Financial](#) | [Receipt](#) | [Disposition](#)

Party Information

Wheltle, R. Bruce
- Plaintiff

Party Attorney

- Attorney
- Hill, Esq., Daniel C
- Bar Code
- 644885
- Address
- Hill Law
- 6 Beacon St
- Suite 600
- Boston, MA 02108
- Phone Number
- (617)494-1220
- Attorney
- Pyle, Esq., Elizabeth May
- Bar Code
- 647425
- Address
- Hill Law
- 6 Beacon St Suite 600
- Boston, MA 02108
- Phone Number
- (617)710-9329

[More Party Information](#)

Wheltle, Susan
- Plaintiff

Party Attorney

- Attorney
- Hill, Esq., Daniel C
- Bar Code
- 644885
- Address
- Hill Law
- 6 Beacon St
- Suite 600
- Boston, MA 02108
- Phone Number
- (617)494-1220
- Attorney
- Pyle, Esq., Elizabeth May
- Bar Code
- 647425
- Address
- Hill Law
- 6 Beacon St Suite 600
- Boston, MA 02108
- Phone Number
- (617)710-9329

[More Party Information](#)

Nybergh, Jonathan
- Defendant

Party Attorney

- Attorney
- McLaughlin, Esq., Robert E
- Bar Code
- 337480
- Address
- Gilman, McLaughlin & Hanrahan, LLP
- 101 Merrimac St
- PO Box 9601
- Boston, MA 02114-9601
- Phone Number
- (617)227-9999

[More Party Information](#)

Doian, Sara
- Defendant

Party Attorney

- Attorney
- McLaughlin, Esq., Robert E
- Bar Code
- 337480
- Address
- Gilman, McLaughlin & Hanrahan, LLP
- 101 Merrimac St
- PO Box 9601
- Boston, MA 02114-9601
- Phone Number
- (617)227-9999

Events

| Date | Session | Location | Type | Event Judge | Result |
|----------------------|-------------------------|---------------------------------|----------------------------|-----------------------------|-----------------------------------------------|
| 12/19/2017 10:30 AM | J. Speicher | | Case Management Conference | Speicher, Hon. Howard P. | Event not held at the request of the parties. |
| 01/18/2018 10:30 AM | J. Speicher | Courtroom 1102 - Eleventh Floor | Telephone Conference Call | Speicher, Hon. Howard P. | Conference held. |
| 01/30/2018 10:30 AM | J. Speicher | Courtroom 1102 - Eleventh Floor | Case Management Conference | Speicher, Hon. Howard P. | Rescheduled |
| 03/02/2018 11:00 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Case Management Conference | Speicher, Hon. Howard P. | Rescheduled |
| 03/02/2018 11:00 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Motion | Speicher, Hon. Howard P. | Taken under advisement. |
| 05/29/2018 11:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Case Management Conference | Speicher, Hon. Howard P. | Rescheduled |
| 05/29/2018 11:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Motion to Dismiss | Speicher, Hon. Howard P. | Rescheduled |
| 06/11/2018 11:30 AM | J. Speicher | Courtroom 1102 - Eleventh Floor | Case Management Conference | Speicher, Hon. Howard P. | Case Management Conference held |
| 06/11/2018 11:30 AM | J. Speicher | Courtroom 1102 - Eleventh Floor | Motion to Dismiss | Speicher, Hon. Howard P. | Motion Denied |
| 11/09/2018 10:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Motion to Amend | Speicher, Hon. Howard P. | Held |
| 11/09/2018 10:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Motion | Speicher, Hon. Howard P. | Held |
| 12/06/2018 10:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Motion | Speicher, Hon. Howard P. | Held |
| 04/30/2019 10:00 AM | J. Speicher | Courtroom 403 - Fourth Floor | Motion | Speicher, Hon. Howard P. | Held |
| 04/30/2019 10:00 AM | J. Speicher | Courtroom 402 - Fourth Floor | Telephone Conference Call | Speicher, Hon. Howard P. | Rescheduled |
| 08/01/2019 11:00 AM | J. Speicher | Courtroom 403 - Fourth Floor | Pre-Trial Conference | Speicher, Hon. Howard P. | Continued |
| 09/18/2019 02:30 PM | J. Speicher | Courtroom 1102 - Eleventh Floor | Motion in Limine | Speicher, Hon. Howard P. | Held |
| 09/18/2019 02:30 PM | J. Speicher | Courtroom 1102 - Eleventh Floor | Pre-Trial Conference | Speicher, Hon. Howard P. | Held |
| 11/15/2019 09:30 AM | J. Speicher | Off Site | View | Speicher, Hon. Howard P. | Held |
| 01/13/2020 03:15 PM | J. Speicher | Courtroom 1102 - Eleventh Floor | Pre-Trial Conference | Speicher, Hon. Howard P. | Held |
| 01/22/2020 09:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Trial | Speicher, Hon. Howard P. | Held - First Day of Trial |
| 01/23/2020 09:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Trial | Speicher, Hon. Howard P. | Held |
| 01/24/2020 09:30 AM | J. Speicher | Courtroom 1101 - Eleventh Floor | Trial | Speicher, Hon. Howard P. | Held |
| 05/12/2020 09:30 AM | J. Speicher | Courtroom 403 - Fourth Floor | Trial | Speicher, Hon. Howard P. | Held |
| 07/08/2020 02:00 PM | J. Speicher | Courtroom 404 - Fourth Floor | Motion | Speicher, Hon. Howard P. | Held via video |
| 07/08/2020 02:00 PM | J. Speicher | Courtroom 404 - Fourth Floor | Status Conference | Speicher, Hon. Howard P. | Held via video |

Docket Information

| Docket Date | Docket Text | Amount Owed | Image Avail. |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------|
| 10/27/2017 | Complaint filed. | | Image |
| 10/27/2017 | Case assigned to the Average Track per Land Court Standing Order 1:04. | | |
| 10/27/2017 | Land Court miscellaneous filing fee Receipt: 376149 Date: 10/27/2017 | \$240.00 | |
| 10/27/2017 | Land Court surcharge Receipt: 376149 Date: 10/27/2017 | \$15.00 | |
| 10/27/2017 | Land Court summons Receipt: 376149 Date: 10/27/2017 | \$10.00 | |
| 10/27/2017 | Uniform Counsel Certificate for Civil Cases filed by Plaintiff. | | |
| 10/30/2017 | The case has been assigned to the A Track. Notice sent. | | |
| 10/30/2017 | Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 12/19/2017 Time: 10:30 AM (Notice Sent to Daniel C. Hill, Esq.) Judge: Speicher, Hon. Howard P. | | |
| 12/07/2017 | Defendants Answer and Counterclaim to Verified Complaint,filed. | | |
| 12/07/2017 | Summons returned to Court with service on Jonathan Nybergh filed. | | |
| 12/18/2017 | Event Resulted Judge: Speicher, Hon. Howard P. The following event: Case Management Conference scheduled for 12/19/2017 10:30 AM has been resulted as follows: Result: Event not held at the request of the parties. | | |
| 12/18/2017 | Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 01/30/2018 Time: 10:30 AM | | |
| 01/02/2018 | Motion to Dismiss Counterclaims,filed. | | |
| 01/02/2018 | Memorandum of Law in support of Plaintiffs' Motion to Dismiss Counterclaims,filed. | | |
| 01/05/2018 | Special Motion to Dismiss,filed. | | |
| 01/05/2018 | Defendants' Memorandum of Law in support of Special Motion to Dismiss,filed. | | |
| 01/05/2018 | Affidavit of Jonathan Nyberg,filed. | | |
| 01/11/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Telephone Conference Call Date: 01/18/2018 Time: 10:30 AM Notice to Attorneys Hill, McLaughlin and Pyle. Judge: Speicher, Hon. Howard P. | | |
| 01/18/2018 | Event Resulted Judge: Speicher, Hon. Howard P. The following event: Telephone Conference Call scheduled for 01/18/2018 10:30 AM has been resulted as follows: Result: Telephone conference call held. Attorneys Hill, Pyle, and McLaughlin appeared. Hearing on defendants' Special Motion to Dismiss scheduled for March 2, 2018 at 11:00 a.m. Opposition to be filed by February 28, 2018. No action taken on Motion to Dismiss Counterclaim, as amended pleading is anticipated. Judge: Speicher, Hon. Howard P. | | |
| 01/18/2018 | Event Resulted Judge: Speicher, Hon. Howard P. The following event: Case Management Conference scheduled for 01/30/2018 10:30 AM has been resulted as follows: Result: Event Rescheduled. | | |

| Docket Date | Docket Text | Amount Owed | Image Avail. |
|------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|
| 01/18/2018 | Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 03/02/2018 Time: 11:00 AM | | |
| 01/18/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Special Motion to Dismiss Date: 03/02/2018 Time: 11:00 AM Judge: Speicher, Hon. Howard P. | | |
| 02/16/2018 | Plaintiffs' Opposition to Defendants' Special Motion to Dismiss Pursuant to M.G.L. c.231 sec 59H filed. | | |
| 02/16/2018 | Affidavit of R. Bruce Whelittle filed. | | |
| 02/16/2018 | Affidavit of Elizabeth M. Pyle filed. | | |
| 02/16/2018 | Defendants' Motion to Amend Answer and Counterclaim to Verified Complaint,filed. | | |
| 02/23/2018 | Joint Statement for Case Management Conference filed. | | |
| 02/27/2018 | Defendants' Rebuttal to Plaintiffs' Opposition to Defendants' Special Motion to Dismiss Pursuant to M.G.L. c.231 sec 59H, filed. | | |
| 03/02/2018 | Event Resulted Judge: Speicher, Hon. Howard P. The following event: Motion scheduled for 03/02/2018 11:00 AM has been resulted as follows: Result: Hearing held on defendant's Special Motion to Dismiss. Attorneys Hill, Pyle, McLaughlin, and Osborne appeared. Motion taken under advisement. Judge: Speicher, Hon. Howard P. | | |
| 03/02/2018 | Event Resulted Judge: Speicher, Hon. Howard P. The following event: Case Management Conference scheduled for 03/02/2018 11:00 AM has been resulted as follows: Result: Event will be rescheduled to a later date. Judge: Speicher, Hon. Howard P. Judge: Speicher, Hon. Howard P. | | |
| 03/12/2018 | Plaintiffs' Motion to Dismiss Amended Counterclaims,filed. | | |
| 03/12/2018 | Memorandum of Law in support of Plaintiffs' Motion to Dismiss Amended Counterclaims,filed. | | |
| 04/17/2018 | Order on Defendants' Special Motion to Dismiss Pursuant to G.L. c.231, Section 59H, issued. (Copies Sent to Attorneys Daniel C.Hill, Elizabeth M. Pyle and Robert E. McLaughlin) Judge: Speicher, Hon. Howard P. | | |
| 04/23/2018 | Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 05/29/2018 Time: 11:30 AM Notice to: Atty's. Attorneys Hill and McLaughlin. Judge: Speicher, Hon. Howard P. | | |
| 04/23/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Motion to Dismiss Date: 05/29/2018 Time: 11:30 AM Notice to: Atty's. Attorneys Hill and McLaughlin Judge: Speicher, Hon. Howard P. | | |
| 05/18/2018 | Defendants' Memorandum in Opposition to Plaintiffs' Motion to Dismiss Amended Counterclaims filed.. | | |
| 05/24/2018 | Plaintiffs' Assented to Emergency Motion to Continue Case Management Conference and Hearing on Motion to Dismiss filed..ALLOWED Judge: Speicher, Hon. Howard P. | | |
| 05/25/2018 | Event Resulted: Case Management Conference scheduled on: 05/29/2018 11:30 AM Has been: Event Rescheduled. Hon. Howard P. Speicher, Presiding Appeared: Staff: | | |
| 05/25/2018 | Event Resulted: Motion to Dismiss scheduled on: 05/29/2018 11:30 AM Has been: Event Rescheduled. Hon. Howard P. Speicher, Presiding Appeared: Staff: | | |
| 05/25/2018 | Event Scheduled Judge: Speicher, Hon. Howard P. Event: Case Management Conference Date: 06/11/2018 Time: 11:30 AM Notice sent to Attorneys Hill and McLaughlin Judge: Speicher, Hon. Howard P. | | |
| 05/25/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Motion to Dismiss Date: 06/11/2018 Time: 11:30 AM Notice sent to Attorneys Hill and McLaughlin Judge: Speicher, Hon. Howard P. | | |
| 06/11/2018 | Event Resulted: Motion to Dismiss scheduled on: 06/11/2018 11:30 AM Has been: Motion Denied Hon. Howard P. Speicher, Presiding Appeared: Staff: | | |
| 06/11/2018 | Case Management Conference Held: Case Management Conference scheduled on: 06/11/2018 11:30 AM Hearing held on plaintiff's Rule 12(b)(6) Motion to Dismiss Counterclaim. Case management conference held. Attorneys Hill, Pyle, and McLaughlin appeared. Motion to Dismiss Counterclaim is DENIED. All discovery, including disclosure of experts, to close December 11, 2018. Dispositive motions, if any, to be filed February 11, 2019. Court to schedule telephone conference call after close of discovery to discuss whether parties intend to file dispositive motions. Judge: Speicher, Hon. Howard P. | | |
| 06/11/2018 | Alternative Dispute Resolution: Early Intervention Event held. Judge: Speicher, Hon. Howard P. | | |
| 06/20/2018 | Whelittes' Answer to Amend Counterclaims,filed. | | |
| 10/25/2018 | Defendants/Plaintiff-in-Counterclaims Motion to further Amend Counterclaims to Verified Complaint,filed. | | |
| 10/25/2018 | Defendants/Plaintiff-in-Counterclaims Memorandum in support of Motion to further Amend Counterclaims to Verified Complaint,filed. | | |

| Docket Date | Text | Amount Owed | Image Avail. |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|
| 10/26/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Defendants/Plaintiff-in-Counterclaims Motion to further Amend Counterclaims to Verified Complaint Date: 11/09/2018 Time: 10:30 AM Judge: Speicher, Hon. Howard P. | | |
| 11/07/2018 | Plaintiffs' Motion for a Preliminary Injunction,filed. | | |
| 11/07/2018 | Affidavit of R.Bruce Wheltle,filed. Judge: Speicher, Hon. Howard P. | | |
| 11/07/2018 | Affidavit of Sean Reardon, P.E.,filed. | | |
| 11/07/2018 | Affidavit of Elizabeth M. Pyle,filed. | | |
| 11/07/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Plaintiffs' Motion for a Preliminary Injunction Date: 11/09/2018 Time: 10:30 AM Judge: Speicher, Hon. Howard P. | | |
| 11/08/2018 | Defendants/Plaintiffs-in-Counterclaims' Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction filed. | | |
| 11/08/2018 | Affidavit of Jonathan Nyberg, filed. | | |
| 11/08/2018 | Affidavit of Jonathan Nyberg, filed. | | |
| 11/09/2018 | Plaintiff's Motion to Strike Affidavit of Jonathan Nyberg, filed. | | |
| 11/09/2018 | Plaintiff's Motion to Strike Affidavit of Jonathan Nyberg, Denied. Judge: Speicher, Hon. Howard P. | | |
| 11/09/2018 | Event Resulted: Motion scheduled on: 11/09/2018 10:30 AM Hearings held on Defendants/Plaintiff-in-counterclaims' Motion to Further Amend Counterclaims to Verified Complaint; and Plaintiffs' Motion for Preliminary Injunction. Attorneys Pyle and McLaughlin appeared. There being no opposition to the Motion to Amend, the Motion to Amend is ALLOWED. Plaintiff's Motion for Preliminary Injunction taken under advisement. Judge: Speicher, Hon. Howard P. | | |
| 11/09/2018 | After Hearing and After Consideration of the Affidavits and Memoranda submitted by the Parties, Plaintiff's Motion for a Preliminary Injunction is Denied. Judge: Speicher, Hon. Howard P. Judge: Speicher, Hon. Howard P. | | |
| 11/20/2018 | Defendants/Plaintiffs-in-Counterclaims' Motion for Oral Deposition of Plaintiffs/Defendants-in-Counterclaim's Expert,filed. | | |
| 11/20/2018 | Defendants/Plaintiffs-in-Counterclaims' Memorandum in support of their Motion for Oral Deposition of Plaintiffs/Defendants-in-Counterclaim's Expert,filed. | | |
| 11/21/2018 | Scheduled Judge: Speicher, Hon. Howard P. Event: Defendants/Plaintiffs-in-Counterclaims' Memorandum in support of their Motion for Oral Deposition of Plaintiffs/Defendants-in-Counterclaim's Expert Date: 12/06/2018 Time: 10:30 AM Judge: Speicher, Hon. Howard P. | | |
| 11/29/2018 | Joint Motion to extend Discovery Deadline,filed. | | |
| 12/05/2018 | Plaintiffs' Opposition to Defendants' Motion for Oral Deposition of Plaintiffs/Defendants-in-Counterclaim's Expert,filed. | | |
| 12/06/2018 | Affidavit of Counsel (Robert E. McLaughlin),filed | | |
| 12/06/2018 | Attorneys McLaughlin, Hill, and Pyle appeared. Defendant/Plaintiff-in-counterclaim's Motion for Oral Deposition of Plaintiffs/Defendants-in-Counterclaim=s Expert is ALLOWED as follows. Rule 26 expert interrogatories and all other discovery except as provided herein to be answered by all parties and otherwise concluded by January 15, 2019. Materials subject to discovery with respect to each party's surveyor include sketches, work drawings, field notes, calculations, and prior plans used in preparation of subject survey, including computer generated data. Expert materials to be produced by February 4, 2019. Depositions of expert surveyors, with each party to bear cost of fees of own expert, to be conducted by February 14, 2019. Should defendant wish to depose plaintiffs' civil engineer, such deposition is authorized, but defendant to pay engineer's reasonable hourly fees. | | |
| 12/10/2018 | Wheltles' Answer to Second Amended Counterclaims filed. | | |
| 04/10/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Telephone Conference Call Date: 04/30/2019 Time: 10:00 AM | | |
| 04/19/2019 | Defendants' Motion in Limine to exclude Expert Testimony,filed. | | |
| 04/19/2019 | Brief in support of Defendants' Motion in Limine to exclude Expert Testimony,filed. | | |
| 04/19/2019 | Defendants' Motion for an Order that all Defendants' request for Admissions that Plaintiffs denied including Request #5 be deemed admitted,filed. | | |
| 04/19/2019 | Brief in support of Defendants' Motion for an Order that all Defendants' request for Admissions that Plaintiffs denied including Request #5 be deemed admitted,filed. | | |
| 04/19/2019 | Defendants' Motion for Conditional Award of Attorney Fees,filed. | | |
| 04/19/2019 | Brief in support of Defendants' Motion for Conditional Award of Expenses and Attorney Fees,filed. | | |
| 04/19/2019 | Defendants' Motion for a Letter Rogatory to the Lake County Circuit Court of the State of Florida,filed. | | |
| 04/22/2019 | Event Resulted: Telephone Conference Call scheduled on: 04/30/2019 10:00 AM Has been: Event Rescheduled. Hon. Howard P. Speicher, Presiding | | |
| 04/22/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Four Motions Defendants' Motion for a Letter Rogatory to the Lake County Circuit Court of the State of Florida Defendants' Motion for Conditional Award of Attorney Fees Defendants' Motion for an Order that all Defendants' request for Admissions that Plaintiffs denied including Request #5 be deemed admitted Defendants' Motion in Limine to exclude Expert Testimony Date: 04/30/2019 Time: 10:00 AM | | |
| 04/26/2019 | Appendix to the Defendants' Motion in Limine to Exclude Expert Testimony filed. | | |
| 04/29/2019 | Plaintiffs' Opposition To "Defendants' Motion for an Order That All of Defendants' Requests for Admissions That Plaintiffs Denied-Including Request #5- Be Deemed Admitted" and Plaintiffs' Cross Motion to Amend Plaintiffs' Responses filed. | | |
| 04/29/2019 | Plaintiffs' Opposition To Defendants' Motion for a Letter Rogatory to the Lake County Circuit Court of the State of Florida filed. | | |
| 04/29/2019 | Plaintiffs' Opposition To Defendants' Motion In Limine to Exclude Expert Testimony filed. | | |
| 04/29/2019 | Plaintiffs' Opposition To Defendants' Motion for Conditional Award of Attorney Fees filed. | | |
| 04/30/2019 | Hearing held on Defendants' Motion for a Letter Rogatory to the Lake County Circuit Court of the State of Florida; Defendants' Motion for Conditional Award of Attorney's Fees; Defendants' motion for an Order that all Defendants' requests for admissions that Plaintiffs denied including Request #5 be deemed admitted; and Defendants' Motion in Limine to Exclude Expert Testimony. Attorneys Pyle, Hill, McLaughlin, and Hofmann appeared. The court having found that the deposition of Mr. Belmont is a within the scope of permissible discovery, Defendants' Motion for a Letter Rogatory to the Lake County Circuit Court of the State of Florida is ALLOWED. Defendants' Motion for Conditional Award of Attorney's Fees is DENIED WITHOUT PREJUDICE as it is premature. Defendants' Motion for an Order that all Defendants' Requests for Admissions that Plaintiffs denied including Request #5 be deemed admitted is DENIED, where the opposing party corrected the deficiency and procured duly executed responses for requested admissions under the pains and penalties of perjury. Defendants' Motion in Limine to Exclude Expert Testimony is ALLOWED without prejudice to the Plaintiffs to submit new proposed disclosure. Pre-trial conference scheduled for August 1, 2019, at 11:00 a.m. | | |

| Docket Date | Docket Text | Amount Owed | Image Avail. |
|------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|----------------------------------|
| 05/01/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Pre-Trial Conference Date: 08/01/2019 Time: 11:00 AM | | |
| 06/27/2019 | Plaintiffs' Assented-to Motion to Amend Plaintiffs' Responses to Request No. 5 of Defendant/Plaintiff-in-Counterclaim, Jonathan Nyberg's First Request for Admissions, filed. | | Image |
| 07/01/2019 | Plaintiffs' Assented-to Motion to Amend Plaintiffs' Responses to Request No. 5 of Defendant/Plaintiff-in-Counterclaim, Jonathan Nyberg's First Request for Admissions, ALLOWED. (Notice sent to Attorneys Hill and McLaughlin) Judge: Speicher, Hon. Howard P. | | Image |
| 07/02/2019 | Joint Motion to Reschedule Pre-Trial Conference, filed. | | Image |
| 07/02/2019 | Joint Motion to Reschedule Pre-Trial Conference, ALLOWED. Pre-Trial Conference rescheduled to September 18, 2019 at 2:30 p.m. Judge: Speicher, Hon. Howard P. | | Image |
| 07/03/2019 | Event Resulted: Pre-Trial Conference scheduled on: 08/01/2019 11:00 AM Has been: Continued Hon. Howard P. Speicher, Presiding | | |
| 07/03/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Pre-Trial Conference Date: 09/18/2019 Time: 02:30 PM | | |
| 09/09/2019 | Defendants' Motion in Limine to Exclude Supplemental Expert Testimony of Patrick Garner, filed. | | |
| 09/09/2019 | Brief in Support of Defendants' Motion in Limine to Exclude Supplemental Expert Testimony of Patrick Garner, filed. | | |
| 09/11/2019 | Joint Pre-Trial Memorandum, filed. | | Image |
| 09/17/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Defendants' Motion in Limine to Exclude Supplemental Expert Testimony of Patrick Garner Date: 09/18/2019 Time: 02:30 PM | | |
| 09/17/2019 | Plaintiffs' Opposition to Defendants' Motion in Limine to exclude Supplemental Expert Testimony of Patrick Garner, filed. | | Image |
| 09/18/2019 | Event Resulted: Pre-Trial Conference scheduled on: 09/18/2019 02:30 PM Has been: Held Hon. Howard P. Speicher, Presiding | | |
| 09/18/2019 | Pretrial conference held. Hearing held on defendants' motion in limine to exclude supplemental expert testimony of Patrick Garner. Attorneys McLaughlin, Hill and Pyle appeared. Motion in Limine is taken under advisement. View of locus scheduled for Friday, November 15th, at 9:30 A.M. Trial scheduled for January 22, 23, and 24, 2020, from 9:30 A.M. to 4:00 P.M. Counsel advised of the possibility of obtaining a summary decision following trial, pursuant to Land Court Rule 14. Counsel directed to inform court within two weeks if they agree to proceed under Rule 14. | | |
| 09/26/2019 | Notice of Defendants' consent to Land Court Rule 14 Procedure,filed. | | Image |
| 09/26/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: View Date: 11/15/2019 Time: 09:30 AM Notice to: Attorneys McLaughlin and Pyle | | |
| 09/26/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Trial Date: 01/22/2020 Time: 09:30 AM Notice to: Attorneys McLaughlin and Pyle | | |
| 09/26/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Trial Date: 01/23/2020 Time: 09:30 AM | | |
| 09/26/2019 | Scheduled Judge: Speicher, Hon. Howard P. Event: Trial Date: 01/24/2020 Time: 09:30 AM | | |
| 10/02/2019 | Plaintiff Notice: Plaintiffs Bruce and Susan Wheltle do not consent to the Land Court Rule 14 procedures,filed. | | Image |
| 10/15/2019 | Order on Defendants' Second Motion in Limine, Issued. (Copies Sent to Attorneys Daniel C. Hill, Elizabeth May Pyle, Robert E. McLaughlin) Judge: Speicher, Hon. Howard P. | | Image |
| 11/15/2019 | Event Resulted: View scheduled on: 11/15/2019 09:30 AM Has been: Held Hon. Howard P. Speicher, Presiding | | |
| 01/06/2020 | Scheduled Judge: Speicher, Hon. Howard P. Event: FINAL Pre-Trial Conference Date: 01/13/2020 Time: 03:15 PM | | |
| 01/06/2020 | Plaintiffs' Motion in Limine to exclude Proposed Defense Exhibits,filed. | | Image |
| 01/09/2020 | Defendants' Opposition to the Plaintiffs' Motion in Limine to exclude Proposed Defense Exhibits,filed. | | Image |
| 01/13/2020 | Pretrial conference held. Attorneys Pyle, Hill, McLaughlin and Hoffman appeared. Plaintiff's motion in limine DENIED without prejudice; defense exhibits A-H can be offered at trial and their admissibility will be ruled upon at that time. Objections to deposition transcript of defendant's expert to be ruled upon at trial. | | |
| 01/16/2020 | Motion to add to Defendants' Witness List,filed. | | Image |
| 01/16/2020 | Affidavit of Robert E. McLaughlin, Sr.,filed | | Image |
| 01/22/2020 | Day 1 of trial held. Attorneys Robert McLaughlin, John Hoffman, Daniel Hill, Elizabeth Pyle, and Kaitlin Baptista appeared. Court reporter James Scally sworn to transcribe testimony in proceedings. Defendant's motion to introduce deposition transcript of Mr. Lenata allowed with respect to the transcript itself, and objections to exhibits thereto will be ruled upon as offered. Trial adjourned, to continue January 23, 2020, at 9:30 A.M., in Boston. | | |
| 01/23/2020 | Attorneys Robert McGloughlin, John Hoffman, Daniel Hill, and Elizabeth Pyle appeared. Court reporter Darlene M. Coppola sworn to transcribe testimony in proceedings. Trial adjourned, to continue January 24, 2020, at 9:30 A.M., in Boston. | | |
| 01/24/2020 | Attorneys Robert McGloughlin, John Hoffman, Daniel Hill, and Elizabeth Pyle appeared. Court reporter Darlene M. Coppola sworn to transcribe testimony in proceedings. Defendant's motion to dismiss pursuant to Mass. R. Civ. P. 41(b)(2) DENIED. Defendant's motion to admit disputed exhibits Z, AA, and BB into the record taken under advisement. Parties to inform the Court whether they would like to proceed under Land Court Rule 14 by January 31, 2020. | | |
| 02/12/2020 | Transcript of (Day 1) Wednesday, January 22, 2020 (Day 2) Thursday, January 23, 2020 (Day 3) Friday, January 24, 2020 before Hon. Howard P. Speicher. All briefs and/or memoranda should be submitted to the Court on or before 03/12/2020. | | |
| 02/12/2020 | Letter Sent To Counsel Informing Them That Briefs Are Due March 12, 2020. | | |
| 03/12/2020 | Defendants/Plaintiffs-in-Counterclaim's Suggested Findings of Fact and Rulings of Law filed. | | Image |
| 03/12/2020 | Plaintiffs' Proposed Findings of Fact and Conclusions of Law filed. | | Image |

| Docket Date | Docket Text | Amount Owed | Image Avail. |
|-----------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|------------------------------|
| 03/12/2020 | Plaintiffs' Post-Trial Brief filed. | | Image |
| 04/21/2020 | Defendants, Jonathan Nyberg and Sara Dolan letter re: Plaintiffs' Proposed Findings of Fact, Conclusions of Law and Post Trial Brief, filed | | |
| 05/04/2020 | Scheduled Judge: Speicher, Hon. Howard P. Event: Closing Arguments/ Telephone Conference Date: 05/12/2020 Time: 09:30 AM | | |
| 05/12/2020 | Closing arguments held by telephone conference. Attorneys Elizabeth Pyle and Robert McLaughlin appeared and argued. Matter taken under advisement. | | |
| 05/28/2020 | Decision and Order issued. (Copy Emailed to Attorneys Daniel C. Hill, Elizabeth M. Pyle, Robert E. McLaughlin, Sr.) Judge: Speicher, Hon. Howard P. | | Image |
| 06/24/2020 | Plaintiffs' Motion for Clarification, filed. | | Image |
| 06/24/2020 | Plaintiffs' correspondence dated June 24, 2020 concerning the survey requested by the Court in the Decision and Order, with Exhibits A and B as separate attachments, filed. | | Image |
| 06/24/2020 | Plaintiffs' correspondence dated June 24, 2020 concerning the survey requested by the Court in the Decision and Order, with Exhibit A, filed. | | Image |
| 06/24/2020 | Plaintiffs' correspondence dated June 24, 2020 concerning the survey requested by the Court in the Decision and Order, with Exhibit B, filed. | | Image |
| 06/30/2020 | Scheduled Judge: Speicher, Hon. Howard P. Event: Plaintiffs' Motion for Clarification Date: 07/08/2020 Time: 02:00 PM | | |
| 06/30/2020 | Scheduled Judge: Speicher, Hon. Howard P. Event: Status Conference Date: 07/08/2020 Time: 02:00 PM | | |
| 06/30/2020 | Defendants' Opposition to Plaintiffs' Motion for Clarification, filed. | | Image |
| 07/08/2020 | Status hearing and hearing on plaintiffs' motion for clarification held by Zoom video conference. Attorneys Robert McLaughlin, Daniel Hill, and Elizabeth Pyle appeared by video conference. Following discussion concerning plan to be appended to judgment, court decided that the Decision will be amended to clarify appropriate measurements for calculation of adversely possessed area. Counsel to provide updated sketch plan reflecting the complete measurements of the triangular area of encroachment of the concrete block wall, Wall D, onto Lot A. Motion for clarification DENIED. | | |
| 08/05/2020 | Amended Decision issued. (Copy emailed to Attorneys McLaughlin Sr., Hofmann, Hill, Pyle,) Judge: Speicher, Hon. Howard P. | | Image |
| 08/05/2020 | Judgment after trial entered (copy emailed to Attorneys McLaughlin Sr., Hofmann, Pyle) (Exhibit A to Judgment) Judge: Speicher, Hon. Howard P. | | Image |

Financial Summary

| Cost Type | Amount Owed | Amount Paid | Amount Dismissed | Amount Outstanding |
|---------------------------|-----------------------------|-----------------------------|----------------------------------|------------------------------------|
| Cost | \$265.00 | \$265.00 | \$0.00 | \$0.00 |
| Total | Total | Total | Total | Total |
| | \$265.00 | \$265.00 | \$0.00 | \$0.00 |

Receipts

| Receipt Number | Receipt Date | Received From | Payment Amount |
|--------------------------------|------------------------------|-------------------------------|--------------------------------|
| 376149 | 10/27/2017 | Hill, Esq., Daniel C | \$265.00 |
| Total | Total | Total | Total |
| | | | \$265.00 |

Case Disposition

| Disposition | Date | Case Judge |
|-------------------------------|----------------------|----------------------------|
| Judgment after trial entered. | 08/05/2020 | Speicher, Hon. Howard P. |

EXHIBIT

F

**COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT**

MIDDLESEX, ss.

MISCELLANEOUS CASE
No. 17 MISC 000617 (HPS)

R. BRUCE WHELTLE and SUSAN
WHELTLE,

Plaintiffs,

v.

JONATHAN NYBERG and SARA
DOLAN,

Defendants.

JUDGMENT

This action commenced on October 27, 2017, as an action in which the plaintiffs seek to establish rights by adverse possession. The case came on for trial by the court (Speicher, J.). In a decision of May 28, 2020, as amended by an amended decision of even date, the court has made findings of fact and rulings of law. In accordance with the court's decision, it is

ORDERED, ADJUDGED and DECLARED that on Count I of the Complaint, seeking a declaratory judgment, Count II seeking a judgment of adverse possession, and Count III, seeking to quiet title, all with respect to certain encroachments from plaintiffs' property at 94 Coolidge Road in Arlington, also known as "Lot 42," onto defendants' property, known as "Lot A" and formerly "Lot 43" and part of "Lot 44" on said Coolidge Road, the plaintiffs have established rights by adverse possession and are entitled to quiet their title to an encroachment of a concrete masonry wall, labelled as "Wall D," for a length of 18.03 feet along the property

boundary between Lot 42 and Lot A, ranging from a maximum encroachment of 1.10 feet at the northwest end of the encroachment to zero feet at the southeast end of the encroachment, with an area of encroachment of approximately 9.9 square feet, all as shown on the plan entitled “Judgment Plan, Line Between Lot 42 and Lot A” attached hereto and incorporated as Exhibit A to this Judgment. It is further **ORDERED, ADJUDGED** and **DECLARED** that the plaintiffs have failed to establish rights by adverse possession with respect to the other encroachments claimed in the Complaint, and that except for the encroachment of Wall D, the boundary between Lot 42 and Lot A is the record boundary line; and it is further

ORDERED, ADJUDGED and **DECLARED** that on Counts I through IV of the Amended Counterclaim, seeking a declaration of adverse possession or prescriptive easement with respect to certain claimed encroachments from Lot A onto Lot 42, the defendants and plaintiffs-in-counterclaim have failed to prove their claims, and title to those claimed encroachments remains in the plaintiffs and defendants-in-counterclaim; and it is further

ORDERED that today’s decision, and this Judgment issued pursuant thereto, dispose of this entire case; the court has adjudicated or dismissed all claims by all parties in this action and has not reserved decision on any claim or defense.

By the Court (Speicher, J.)
/s/Howard P. Speicher
Attest:

/s/Deborah J. Patterson
Deborah J. Patterson
Recorder

Dated: August 5, 2020

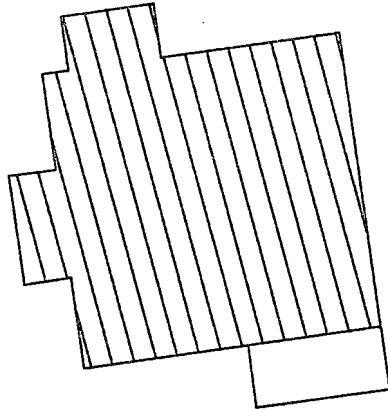
EXHIBIT A

(on following page)

PLAN NORTH

COOLIDGE ROAD

DRILLHOLE FD.



54.50'

1.10'

CONCRETE MASONRY
WALL "D"

18.03'

LOT 42

27.5'

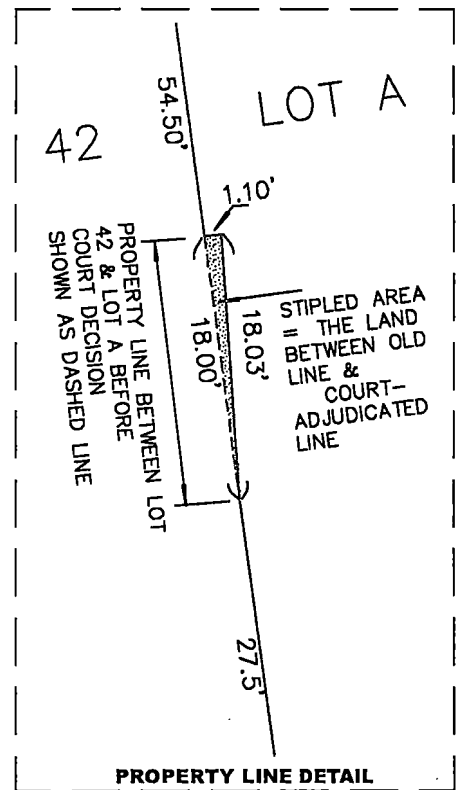
TIMBER WALL

80.00'

REBAR W/
"GOSSELIN SURVEY"
ALUM. CAP FD.

PROPERTY LINE DETAIL

1" = 40 FEET



PROPERTY LINE DETAIL

SCALE: 1" = 30 FEET

JUDGMENT PLAN

LINE BETWEEN LOT 42 AND LOT A
COOLIDGE ROAD, ARLINGTON, MASS.

PROJECT NO:

SCALE: AS NOTED

DRAWN BY:

DATE: 7/15/20

CHECKED BY:

SHT: 1

REVISED:

OF: 1

EXHIBIT

G

5
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

B
Superior Court Department
Civil Action No. 1781CV03100

JUSTINE COVAULT, BRUCE WHELTLE,
and FREDERIK HEGER,

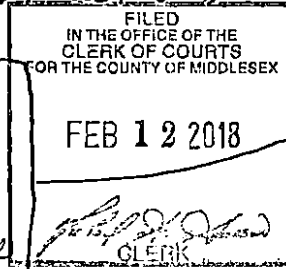
Plaintiffs,

v.

THE TOWN OF ARLINGTON
CONSERVATION COMMISSION and
JONATHAN NYBERG,

Defendants.

3/29/18 After hearing, and finding
that this case may be most depending
on the outcome of the adverse
possession action, a stay of this
proceeding is
appropriate. The parties
shall notify
the court every six
months to
report jointly
on the status of the
Land Court
proceeding.
The first
such status
report
will be
due by 10/1/18.
Once the Land Court
case is
resolved,
the parties
shall notify the
Court promptly.



MOTION OF PLAINTIFFS AND
TOWN OF ARLINGTON CONSERVATION COMMISSION
TO STAY PROCEEDINGS

Plaintiffs Justine Covault, Bruce Wheltle and Frederik Heger (the "Plaintiffs") and
defendant Town of Arlington Conservation Commission (the "Conservation Commission")
respectfully move to stay this matter until such time as a Massachusetts Land Court case, Bruce Wheltle et al. v. Jonathan Nyberg et al., 17 Misc. 000617 (HPS) (the "Land Court Case"),
is finally resolved. As reasons therefor, the Plaintiffs and the Conservation Commission state as
follows:

1. Plaintiff Bruce Wheltle has filed a claim for adverse possession with respect to a
strip of the property (88 Coolidge Road in Arlington, Massachusetts) that is the subject of the
Order of Conditions at issue in this G.L. c. 249, § 4 certiorari appeal. See copy of Verified
Complaint, attached as Exhibit A.
2. If Mr. Wheltle is successful in his adverse possession claim, then 88 Coolidge
Road would not have sufficient frontage or lot area to qualify as a buildable lot under the Town



Town of Arlington, Massachusetts

Request for Determination of Applicability

Summary:

Request for Determination of Applicability: 1165R Massachusetts Avenue

This RDA requests that the Commission review the jurisdiction of various resource areas within the boundaries of 1165R Mass Ave. The following three reviews are requested:

- 1) Review the Riverfront area to determine if the property contains a Historic Mill Complex as defined under the Massachusetts Wetlands Protection Act (WPA) Regulations 310 CMR 10.04.
- 2) Review the Historic Mill Complex exemption request under the Riverfront regulations in accordance with 310 CMR 10.58(6)(k).
- 3) Review the existing drainage ditch, known locally as Ryder Brook, and determine if it meets the definition of "stream" according to 310 CMR 10.04.

ATTACHMENTS:

| | Type | File Name | Description |
|---|--------------------------------------------|---------------------------------------|--------------------|
| ▢ | Request for Determination of Applicability | 1165R_Mass_Ave_40B_RDA-compressed.pdf | 1165R Mass Ave RDA |

August 10, 2020

Arlington Conservation Commission
730 Massachusetts Ave.
Arlington, MA 02476

**Re: Request for Determination of Applicability
1165-1167 Mass Ave. & 0 Ryder Street - Arlington, MA**

1. Introduction

Goddard Consulting, LLC (Goddard), is pleased to submit this RDA on behalf of “1165R Mass Ave MA Property LLC” for the properties known as 1165-1167 Mass Ave. and 0 Ryder Street in Arlington (Parcel IDs 57-2-10.B and 57-2-15 respectively). Note that the RDA is being filed under the WPA only. Upon the filing of this RDA, we request that the Commission make the following three determinations:

- 1) Confirm that the entire Riverfront area within property contains an Historic Mill Complex as defined under the Massachusetts Wetlands Protection Act (WPA) Regulations 310 CMR 10.04.
- 2) Confirm that the “footprint of the Historic Mill Complex” is exempt from Riverfront regulations in accordance with 310 CMR 10.58(6)(k).
- 3) Confirm that the area shown as an existing drainage ditch (known locally as “Ryder Brook”) does not meet the definition of “stream” according to 310 CMR 10.04 and is therefore not a jurisdictional resource area.

Note that we have included a MassDEP Office of Appeals and Dispute Resolution (OADR) Final Decision on a relevant case involving a Historic Mill Complex determination (In the Matter of 104 Stonybrook LLC,” which should provide valuable information for the Commission during its review. Unlike the developer in this case (see p.11), we have provided clear evidence that an Historic Mill Complex clearly was in existence before 1946 and continues to exist after August 7, 1996, thus meeting the definition in 310 CMR 10.04.

A list of enclosed supporting documents is as follows:

- Request for Determination of Applicability (WPA Form 1)
- “Orthophoto View of Site,” Goddard Consulting, LLC, 5/5/20
- “USGS Site Locus,” Goddard Consulting, LLC, 5/5/20
- “Existing Conditions Plan,” Bohler Engineering, 8/7/20

- “Analysis of Mill Complex Designation,” Goddard Consulting, LLC, 8/10/20
- “Drainage Ditch Analysis,” Goddard Consulting, LLC, 8/10/20
- “In the Matter of 104 Stonybrook LLC” OADR Recommended Final Decision, OADR Docket No. WET-2017-021, May 21, 2018.

2. Existing Conditions

The subject property, located at 1165-1167 Mass Ave. and 0 Ryder Street, is currently developed with a series of old mill buildings and associated structures including paved parking areas. Wetland resource areas onsite consist of a perennial stream (Mill Brook), which flows in a northwest to southeast direction through the property in an armored channel, directly underneath some of the existing mill buildings. Riverfront resource area extends 200 feet in both directions from the mean annual high water of the Brook, as shown on the Existing Conditions plan. See the “Analysis of Historic Mill Complex Designation” report for a more detailed description.

The onsite portion of a non-jurisdictional drainage ditch (known locally as Ryder Brook) conveys stormwater through a portion of the property before it enters a culvert and ultimately connects Mill Brook. The daylighted portion of the ditch originates at a culvert discharge offsite just below the Minuteman Bikeway and flows towards the subject property. Using existing and historical imagery, USGS StreamStats and on-the-ground inspections, we determined that there are no freshwater wetlands upgradient of the discharge point from under the Minuteman Bikeway, and that the source of the water flowing through the ditch (when it is flowing) is likely entirely from catch basins. The banks of the ditch are shown on the Existing Conditions plan, as SB1-6 on the west side and SB 101-106 on the east side. See the “Drainage Ditch Analysis” for a more detailed description.

If there are any questions concerning this submission, please do not hesitate to contact me.

Sincerely,

Goddard Consulting, LLC

by 

Dan Wells, M.S.
Senior Wildlife Biologist & Wetland Scientist



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Arlington

City/Town

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

A. General Information

Important:

When filling out forms on the computer, use only the tab key to move your cursor - do not use the return key.



1. Applicant:

Daniel St. Clair, 1165R Mass Ave MA Property LLC

Name

Daniel.StClair@ssinvests.com

E-Mail Address

One Post Office Square, 26th Floor

Mailing Address

Boston

City/Town

MA

State

02109

Zip Code

(617) 531-4244

Phone Number

Fax Number (if applicable)

2. Representative (if any):

Goddard Consulting, LLC

Firm

Dan Wells

Contact Name

dan@goddardconsultingllc.com

E-Mail Address

291 Main Street, Suite 8

Mailing Address

Northborough

City/Town

MA

State

01532

Zip Code

(508) 393-3784

Phone Number

Fax Number (if applicable)

B. Determinations

1. I request the Arlington make the following determination(s). Check any that apply:
Conservation Commission

- ☒ a. whether the **area** depicted on plan(s) and/or map(s) referenced below is an area subject to jurisdiction of the Wetlands Protection Act.
- ☐ b. whether the **boundaries** of resource area(s) depicted on plan(s) and/or map(s) referenced below are accurately delineated.
- ☐ c. whether the **work** depicted on plan(s) referenced below is subject to the Wetlands Protection Act.
- ☐ d. whether the area and/or work depicted on plan(s) referenced below is subject to the jurisdiction of any **municipal wetlands ordinance** or **bylaw** of:

Name of Municipality

- ☐ e. whether the following **scope of alternatives** is adequate for work in the Riverfront Area as depicted on referenced plan(s).



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Arlington

City/Town

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. Project Description

1. a. Project Location (use maps and plans to identify the location of the area subject to this request):

1165-1167 Mass Ave; 0 Ryder Street

Street Address

Arlington

City/Town

57-2

Assessors Map/Plat Number

10.B and 15

Parcel/Lot Number

- b. Area Description (use additional paper, if necessary):

1) The entire onsite Riverfront Area, since it falls within the footprint of an Historic Mill Complex.

2) The area of a drainage ditch depicted by flags SB1-6 and SB 101-106.

- c. Plan and/or Map Reference(s):

Existing Conditions Plan by Bohler Engineering

Title

8/7/20

Date

Title

Date

Title

Date

2. a. Work Description (use additional paper and/or provide plan(s) of work, if necessary):



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Arlington

City/Town

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

C. Project Description (cont.)

b. Identify provisions of the Wetlands Protection Act or regulations which may exempt the applicant from having to file a Notice of Intent for all or part of the described work (use additional paper, if necessary).

1a) 310 CMR 10.04 Historic Mill Complex definition; 1b) 310 CMR 10.58(6)(k) exempt activities in riverfront; 2) 310 CMR 10.04 Stream definition.

3. a. If this application is a Request for Determination of Scope of Alternatives for work in the Riverfront Area, indicate the one classification below that best describes the project.

- ☐ Single family house on a lot recorded on or before 8/1/96
- ☐ Single family house on a lot recorded after 8/1/96
- ☐ Expansion of an existing structure on a lot recorded after 8/1/96
- ☐ Project, other than a single family house or public project, where the applicant owned the lot before 8/7/96
- ☐ New agriculture or aquaculture project
- ☐ Public project where funds were appropriated prior to 8/7/96
- ☐ Project on a lot shown on an approved, definitive subdivision plan where there is a recorded deed restriction limiting total alteration of the Riverfront Area for the entire subdivision
- ☐ Residential subdivision; institutional, industrial, or commercial project
- ☐ Municipal project
- ☐ District, county, state, or federal government project
- ☐ Project required to evaluate off-site alternatives in more than one municipality in an Environmental Impact Report under MEPA or in an alternatives analysis pursuant to an application for a 404 permit from the U.S. Army Corps of Engineers or 401 Water Quality Certification from the Department of Environmental Protection.

b. Provide evidence (e.g., record of date subdivision lot was recorded) supporting the classification above (use additional paper and/or attach appropriate documents, if necessary.)



Massachusetts Department of Environmental Protection

Bureau of Resource Protection - Wetlands

Arlington

City/Town

WPA Form 1- Request for Determination of Applicability

Massachusetts Wetlands Protection Act M.G.L. c. 131, §40

D. Signatures and Submittal Requirements

I hereby certify under the penalties of perjury that the foregoing Request for Determination of Applicability and accompanying plans, documents, and supporting data are true and complete to the best of my knowledge.

I further certify that the property owner, if different from the applicant, and the appropriate DEP Regional Office were sent a complete copy of this Request (including all appropriate documentation) simultaneously with the submittal of this Request to the Conservation Commission.

Failure by the applicant to send copies in a timely manner may result in dismissal of the Request for Determination of Applicability.

Name and address of the property owner:

1165R Mass Ave MA Property LLC

Name

Spaulding & Slye Investments, One Post Office Square, 26th Floor

Mailing Address

Boston

City/Town

MA

State

02109

Zip Code

Signatures:

I also understand that notification of this Request will be placed in a local newspaper at my expense in accordance with Section 10.05(3)(b)(1) of the Wetlands Protection Act regulations.

Signature of Applicant

August 17, 2020

Date

Signature of Representative (if any)

8/18/20

Date

Bylaw Filing Fees and Transmittal Form

Rules:

1. Fees are payable at the time of filing the application and are non-refundable.
2. Fees shall be calculated per schedule below.
3. Town, County, State, and Federal Projects are exempt from fees.
4. These fees are in addition to the fees paid under M.G.L. Ch. 131, s.40 (ACT).

Fee Schedule (ACC approved 1/8/15):

| \$ | No./Area | Category |
|------------|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 150 | 1 | (R1) RDA- \$150 local fee, no state fee |
| | | (N1) Minor Project - \$200 (house addition, tennis court, swimming pool, utility work, work in/on/or affecting any body of water, wetland or floodplain). |
| | | (N2) Single Family Dwelling - \$600 |
| | | (N3) Multiple Dwelling Structures - \$600 + \$100 per unit all or part of which lies within 100 feet of wetlands or within land subject to flooding. |
| | | (N4) Commercial, Industrial, and Institutional Projects - \$800 + 50¢/s.f. wetland disturbed; 2¢/s.f. land subject to flooding or buffer zone disturbed. |
| | | (N5) Subdivisions - \$600 + \$4/l.f. feet of roadway sideline within 100 ft. of wetlands or within land subject to flooding. |
| | | (N6) Other Fees - copies, printouts; per public records law |
| | | (N7) Minor Project Change - \$50 |
| | | (N8) Work on Docks, Piers, Revetments, Dikes, etc - \$4 per linear foot |
| | | (N9) Resource Boundary Delineation (ANRAD) - \$1 per linear foot |
| | | (N10) Certificate of Compliance (COC or PCOC) - No charge if before expiration of Order, \$200 if after that date. |
| | | (N11) Amendments - \$300 or 50% of original local filing fee, whichever is less. |
| | | (N12) Extensions - |
| | | a. Single family dwelling or minor project - \$100. |
| | | b. Other - \$150. |
| | | (N13) Consultant Fee -per estimate from consultant |
| 150 | TOTAL | |

Note: Submit this form along with the forms submitted for the ACT - the "Wetlands Filing Fee Calculations Worksheet," and the "Notice of Intent Fee Transmittal Form."

KRATTENMAKER OCONNOR & INGBER PC

177 STATE ST 5TH FLOOR
ONE MCKINLEY SQUARE
BOSTON MA 02109

9986

5-7515/110

DATE

8/7/2020

PAY
TO THE
ORDER OF

Town of Arlington

one hundred fifty dollars

\$150.00

DOLLARS



Santander Bank, N.A.

FOR

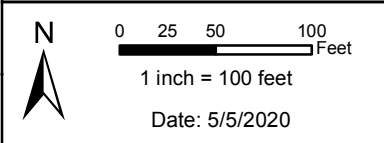


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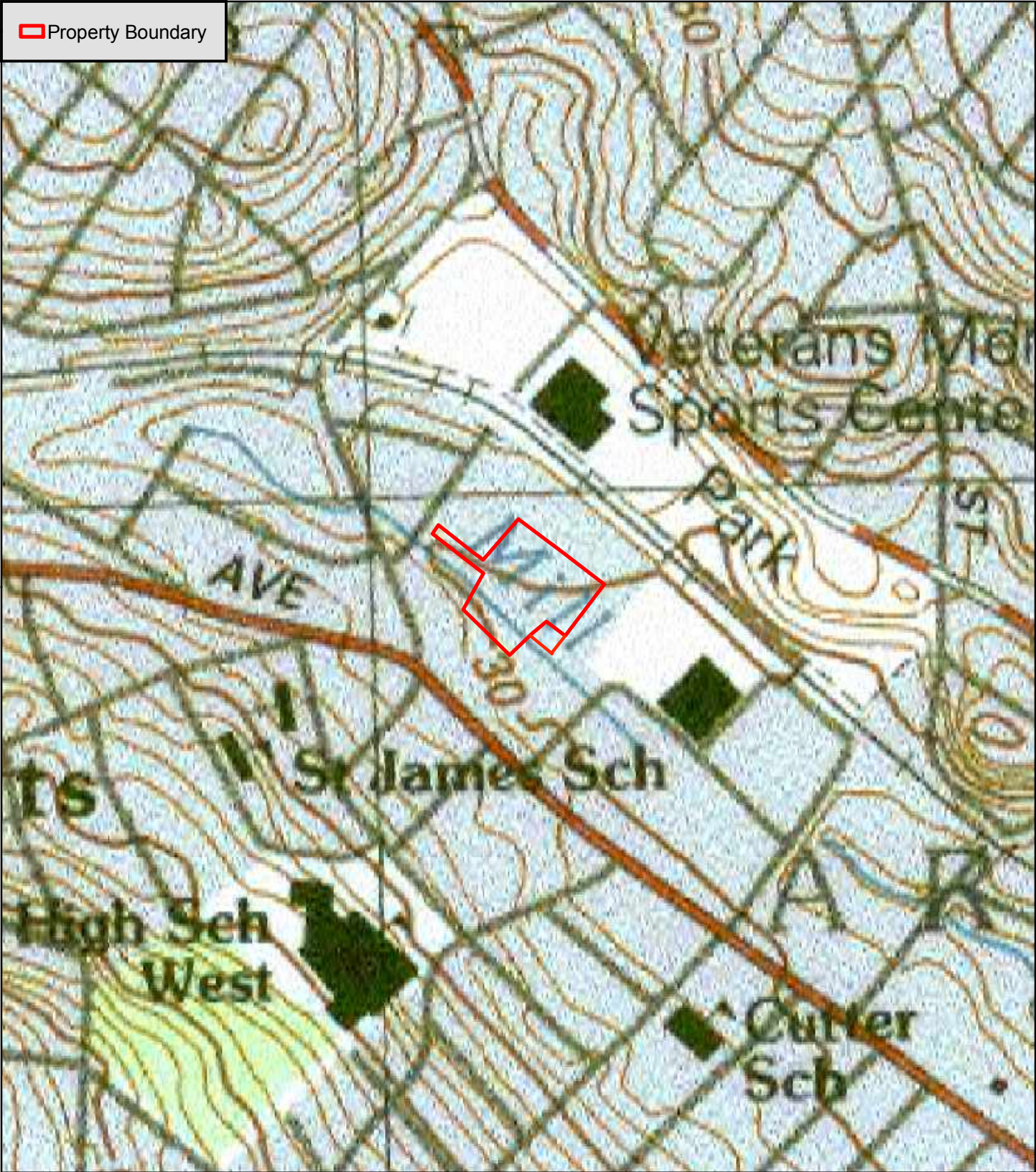


Orthophoto View of Site

1165-1167 Mass Ave. - Arlington, MA

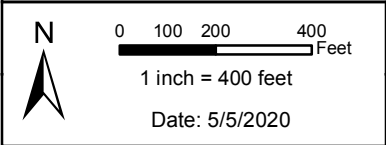


GIS Data Source: "Office of Geographic Information (MassGIS), Commonwealth of Massachusetts Executive Office of Technology and Security Services"



USGS Site Locus

1165-1167 Mass Ave. - Arlington, MA



GIS Data Source: "Office of Geographic Information (MassGIS), Commonwealth of Massachusetts Executive Office of Technology and Security Services"

Legal Notice Charge Authorization


DATE:

TO: legals@wickedlocal.com

I hereby authorize Community Newspapers to bill me directly for the legal notice to be published in the
Arlington Advocate newspaper on _____ for a public hearing with the Arlington
Conservation Commission to review a project at the following location:

1165-1167 Mass Ave. & 0 Ryder St.

Thank you.

Signed:  _____

Send bill to:

1165R Mass Ave MA Property LLC (Address)
c/o Spaulding & Slye Investments
One Post Office Square, 26th Floor
Boston, MA 02109 (Phone)
202-213-4487

August 10, 2020

Arlington Conservation Commission
730 Massachusetts Ave.
Arlington, MA 02476

**Re: Analysis of Historic Mill Complex Designation
1165-1167 Mass Ave. - Arlington, MA**

1. Introduction

Goddard Consulting, LLC (Goddard), is pleased to submit this report regarding the status of the above referenced property as a Historic Mill Complex under the Massachusetts Wetlands Protection Act (WPA) and Regulations 310 CMR 10.00. Areas which qualify as a Historic Mill Complex are exempt from Riverfront regulations in accordance with 310 CMR 10.58(6)(k). Our review of existing conditions and relevant historical documentation has determined that the subject parcel - including building footprints, driveways and parking areas - meet the definition of a Historic Mill Complex and therefore are exempt from Riverfront Area regulations.

A list of all enclosed documents is as follows:

- *Appendix A: MACRIS Record arl-621*
Source: Massachusetts Historical Commission
- *Appendix B: 11. Theodore Schwamb's Factory and Home,*
Source: Menotomy Minuteman Historical Trail website

2. Existing Conditions

The subject property, located at 1165-1167 Mass Ave. is located within a heavily developed portion of Arlington. The property is currently developed with a series of old mill buildings and associated structures including paved parking areas. Wetland resource areas onsite consist of a perennial stream (Mill Brook), which flows in a northwest to southeast direction through the property in an armored channel, directly underneath some of the existing mill buildings (Photos 1 & 2). Riverfront resource area extends 200 feet in both directions from the mean annual high water of the Brook, as shown on the Existing Conditions plan. Both the banks and stream bed of the brook are armored with a mixture of concrete and granite block over the entire run of the subject parcel.



Photo 1: Southeast facing view of Mill Brook taken from within the channel. The banks and bed of the stream are heavily armored over its course of the subject parcel.



Photo 2: Northwest facing view of Mill Brook as it flows underneath the historic Charles Shwamb Co. mill building. Bed armoring in this stretch consists of smooth poured concrete.

According to the enclosed Mass. Historical “MACRIS” record of the property (Appendix A), the original mill building which spans Mill Brook was constructed in 1905. It is noted, additionally, that “Mills have stood at this site on the brook from the late 18th c.”

The MACRIS document does not establish a date of construction for a number of the accessory buildings and structures, however analysis of a sequence of historical aerial photographs from 1939 (Photo 3), 1955 (Photo 4) and 2018 (Photo 5) definitively shows that the mill buildings in their current configuration were in existence and therefore constructed prior to 1946, which is a key date in the definition described in Section 3.

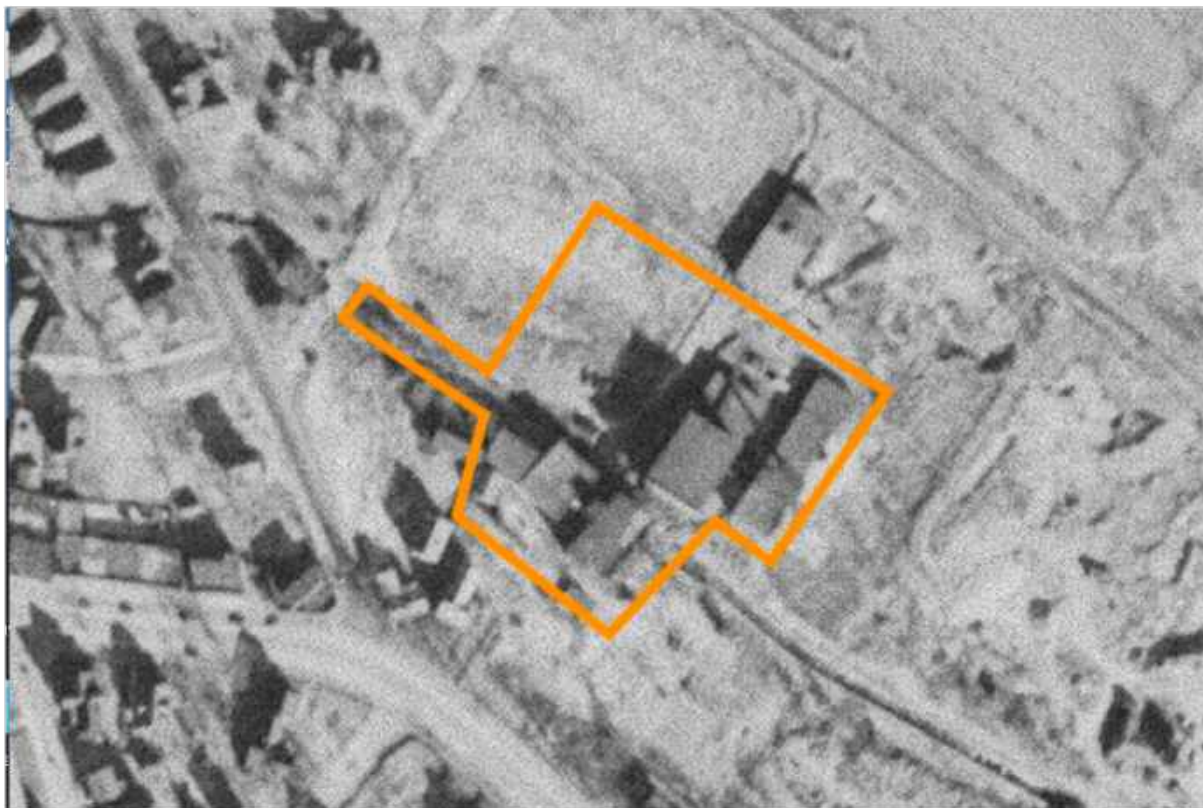


Photo 3: Aerial image from 1939, showing the mill buildings and the approximate property boundary.



Photo 4: Aerial image of the subject parcel taken in 1955.

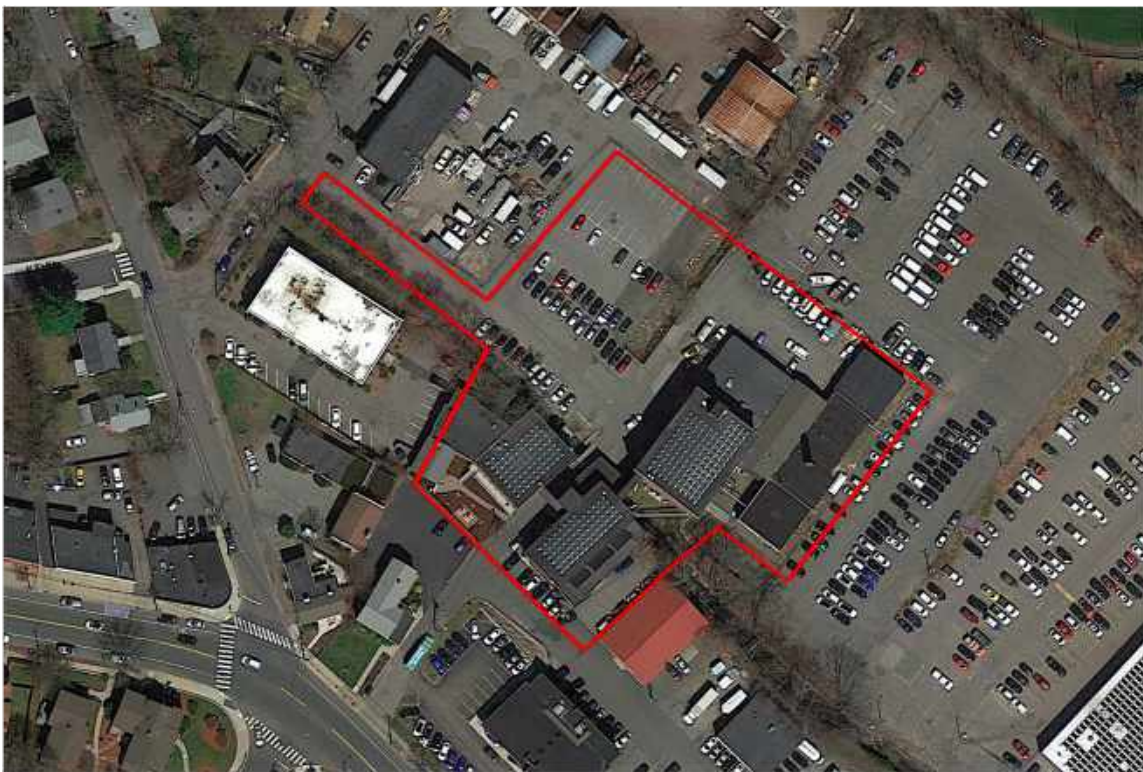


Photo 5: Aerial view of the subject parcel, taken 4/22/2018.

3. Regulatory Context

In the Definitions section of the WPA Regulations (310 CMR 10.04), Historic Mill Complex is defined as:

“mill complexes in, but not limited to, Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford in existence prior to 1946 and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on August 7, 1996. An historic mill complex also means any historic mill included on the Massachusetts Register of Historic Places. An historic mill complex includes only the footprint of the area that is or was occupied by interrelated buildings (manufacturing buildings, housing, utilities, parking areas, and driveways) constructed before and existing after 1946, used for any type of manufacturing or mechanical processing and including associated structures to provide water for processing, to generate water power, or for water transportation.”

The imagery and historical documents presented above confirm that the mill complex was in fact “constructed before and existing after 1946.” Therefore, the “footprint of the area that is occupied by interrelated buildings” should be considered part of a Historic Mill Complex pursuant to 310 CMR 10.04.

In the Riverfront Regulations, 310 CMR 10.58(6)(k) states:

“Notwithstanding the Provisions of 310 CMR 10.58(1) through (5), Certain Activities or Areas Are Grandfathered or Exempted from Requirements for the Riverfront Area:

(k) Activities with an Historic Mill Complex.”

Therefore, activities within the “footprint of the area that is occupied by interrelated buildings” should be exempted from requirements of the Riverfront Area.

If there are any questions concerning this submission, please do not hesitate to contact me.

Sincerely,

Goddard Consulting, LLC

by 

Dan Wells, M.S.
Senior Wildlife Biologist & Wetland Scientist

August 10, 2020

Arlington Conservation Commission
730 Massachusetts Ave.
Arlington, MA 02476

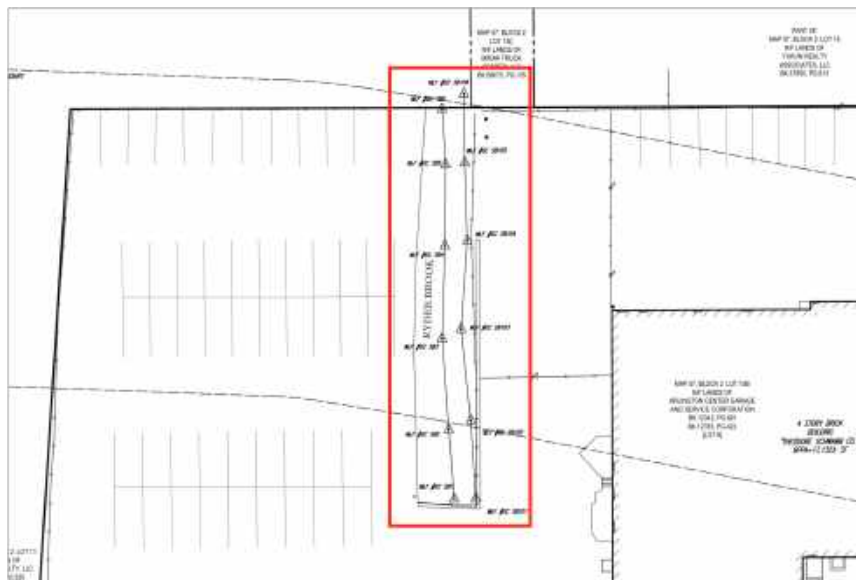
Re: Drainage Ditch Analysis
1165-1167 Mass Ave. & 0 Ryder Street - Arlington, MA

1. Introduction

Goddard Consulting, LLC (Goddard), is pleased to submit this RDA on behalf of "1165R Mass Ave MA Property LLC" for the property known as 1165-1167 Mass Ave in Arlington. The purpose of this analysis is to provide evidence to the Commission that the existing drainage ditch shown on the Existing Conditions plan (known locally as "Ryder Brook") does not meet the definition of "stream" according to 310 CMR 10.04 and is therefore not a jurisdictional resource area.

2. Existing Conditions

The banks of the drainage ditch were delineated by Goddard Consulting with flags labeled SB1-6 on the west side and SB101-106 on the east side, as shown on the Existing Conditions plan dated 8/5/20.



The onsite portion of the ditch conveys stormwater through a portion of the property before it enters a culvert and ultimately connects to Mill Brook. The daylighted portion of the ditch originates at a culvert discharge offsite just below the Minuteman Bikeway and flows towards the subject property. Using existing and historical imagery, USGS StreamStats and on-the-ground inspections, I determined that there are no freshwater wetlands upgradient of the discharge point from under the Minuteman Bikeway, and that the source of the water flowing through the ditch (when it is flowing) is likely entirely from catch basins.

It contains well-defined banks and is bordered by greater than 90% upland plant species with upland soils, so no Bordering Vegetated Wetlands are present alongside. The ditch was observed to be completely dry on 8/10/20 (Photo 1), and is therefore considered to be “intermittent.”



Photo 1 - View of dry ditch on 8/10/20.

3. Mapping Analysis

The earliest available USGS map of the subject area is from 1903 (Figure 1). In this image, there is a clear stream system leading down slope of Turkey Hill from a mapped wetland (within purple circle) into Mill Brook. Note that the map shows what is now known as Ryder Brook flowing northwest of the subject property.



Figure 1 - USGS map from 1903.

A subsequent USGS map from 1943 (Figure 2) shows a similar stream system flowing down Turkey Hill to Mill Brook, but no longer a wetland at the source (purple circled area).



Figure 2 - USGS map from 1943.

Just three years later, a map from 1946 (Figure 3) shows a complete disappearance of the former source wetland (purple circle) and of the stream system down Turkey Hill.



Figure 3 - USGS map from 1946.

A map from 1956 (Figure 4) indicates that the entire area had been converted to residential neighborhoods.



Figure 4 - USGS map from 1956.

Finally, the current USGS map from 2018 (Figure 5) shows no wetlands or streams leading down Turkey Hill towards Mill Brook.

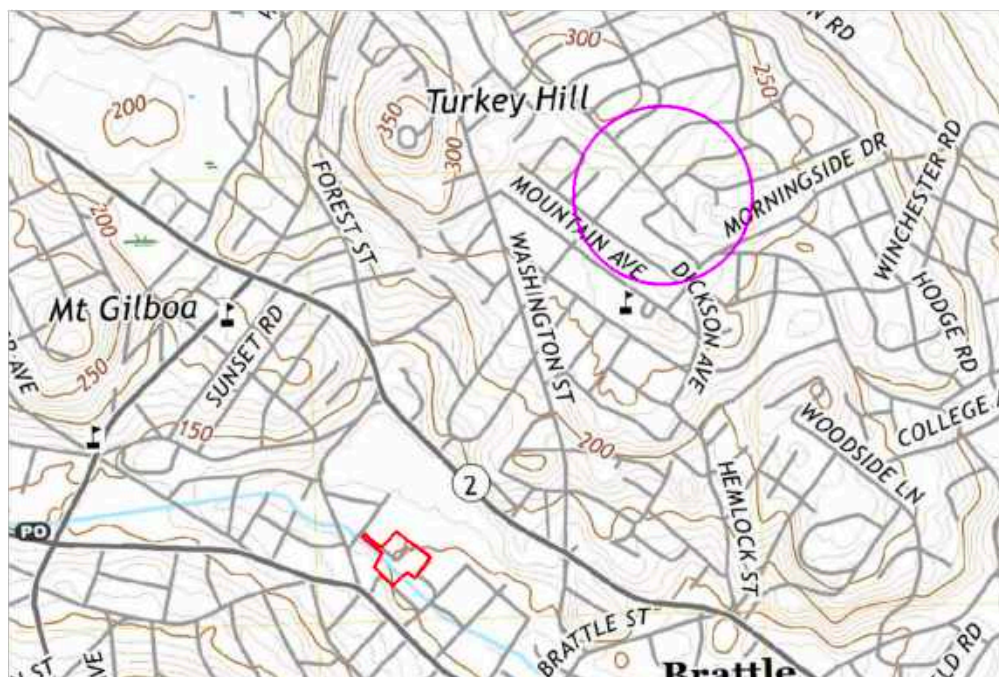


Figure 5 - USGS map from 2018.

The USGS StreamStats website is another valuable tool for analyzing streams and watersheds. The following images (Figures 6 & 7) show the current delineation of streams connecting to Mill Brook in the vicinity of the subject property (as a map and ortho view respectively).

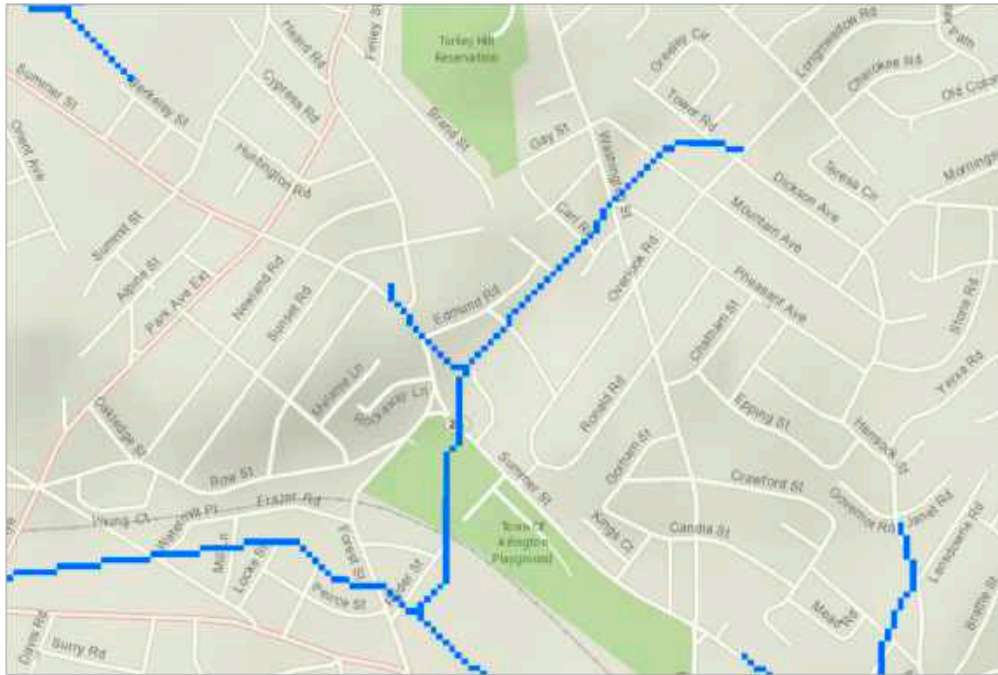


Figure 6 - StreamStats map view of streams flowing into Mill Brook.

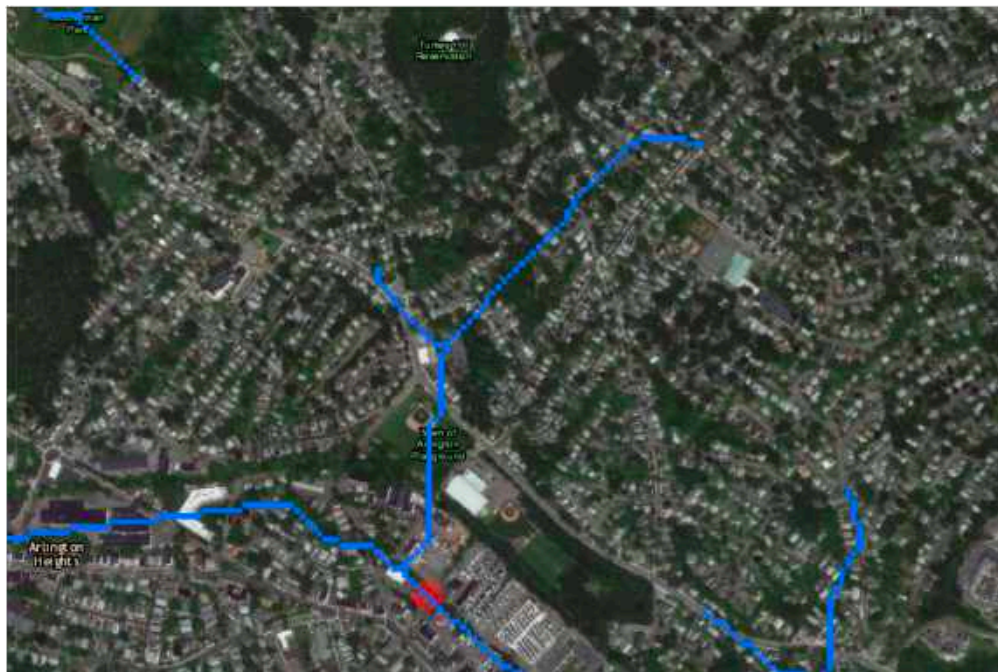


Figure 7 - Orthophoto view of StreamStats stream mapping.

Using the StreamStats map as a guide, I inspected the mapped drainage, from near the top of Turkey Hill at Tower Lane/Hiawatha Road and zig-zagged down the slope by car and on foot, looking for any indication of streams or wetlands. I did not observe any sign of wetlands or streams from Turkey Hill to the culvert discharge just below the Minuteman Bikeway. I concluded that there are no wetlands upgradient of the onsite drainage ditch.

4. Regulatory Context

The following is the official definition of “Stream” from the WPA Regulations.

Stream means a body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of an Area Subject to Protection under M.G.L. c. 131, § 40. A portion of a stream may flow through a culvert or beneath a bridge. Such a body of running water which does not flow throughout the year (*i.e.*, which is intermittent) is a stream except for that portion upgradient of all bogs, swamps, wet meadows and marshes.

(310 CMR 10.04)

The last phrase of this definition is the key to our assertion that the ditch is not a jurisdictional stream: “except for that portion upgradient of all bogs, swamps, wet meadows and marshes.” There are no bogs, swamps, wet meadows or marshes presently upgradient of the ditch, therefore I conclude that it is not a stream, in accordance with 310 CMR 10.04.

If there are any questions concerning this submission, please do not hesitate to contact me.

Sincerely,

Goddard Consulting, LLC

by 

Dan Wells, M.S.
Senior Wildlife Biologist & Wetland Scientist

2018 WL 6040701 (Mass.Dept.Env.Prot.)

Department of Environmental Protection

Commonwealth of Massachusetts

IN THE MATTER OF 104 STONY BROOK, LLC

OADR Docket No. WET-2017-021

May 21, 2018

*1 Weston, MA

THE OFFICE OF APPEALS AND DISPUTE RESOLUTION

RECOMMENDED FINAL DECISION

INTRODUCTION

The Petitioner, 104 Stony Brook, LLC (“Petitioner” or “Stony Brook”), challenges the Superseding Order of Resource Area Delineation (“SORAD”) issued by the Massachusetts Department of Environmental Protection's Northeast Regional Office (“DEP”) concerning Stony Brook's real property at 104 Boston Post Road, Weston, Massachusetts (“the Property”). The SORAD was issued pursuant to the Wetlands Protection Act, [G.L. c. 131 § 40](#), and the Wetlands Regulations, [310 CMR 10.00](#). The protected Resource Areas at the Property include Riverfront Area and Bordering Vegetated Wetlands (“BVW”). See [G.L. c. 131 § 40](#); [310 CMR 10.02](#); [310 CMR 10.55](#) and [10.58](#).

Stony Brook lodged this appeal after its request to exempt the Property from the Riverfront Area regulations was denied by both the Weston Conservation Commission (“Commission”) and DEP in the Order of Resource Area Delineation (“ORAD”) and SORAD, respectively. Shortly after filing this appeal here, with the Office of Appeals and Dispute Resolution (“OADR”), Stony Brook filed a motion for summary decision arguing that the Property is exempt from regulation as Riverfront Area pursuant to Section 18 of the Rivers Protection Act (or “Rivers Act”). Stony Brook argues that the Property is exempt because of its asserted association with an historic mill complex. That association, Stony Brook contends, provides an exemption under the Rivers Protection Act from regulation as a Riverfront Area.

The other parties—DEP, Intervener City of Cambridge, and the Commission—all opposed the motion for summary decision, and filed cross motions for summary decision. Those parties assert that the purported exemption under the Rivers Protection Act is inapplicable. Instead, they contend that DEP promulgated regulations that implement the historic mill complex exemption in the Rivers Act and the Property is not encompassed within the scope of that regulatory exemption.

There are no genuine issues of material fact, and thus the appeal is ripe for summary decision. After reviewing the parties' pleadings, the applicable law, and the administrative record I conclude that the Rivers Act does not exempt the Property from being regulated as Riverfront Area. When the Massachusetts Legislature enacted the Rivers Act it charged DEP with promulgating regulations to implement that act. DEP did that when it promulgated [310 CMR 10.58](#) (Riverfront Area regulations) and the definition of Historic Mill Complex in [310 CMR 10.04](#). As a consequence, those regulations are the controlling regulatory authority for historical mill complex exemptions in the Riverfront Area, not the Rivers Act.

Contrary to Stony Brook's argument, DEP's regulatory exemption for Historic Mill Complexes properly and validly implements the Rivers Act's historic mill exemption. As a consequence, the regulatory exemption is the only historic mill complex

exemption, and there are not two exemptions, one under the Rivers Act and the other under the regulations, as Stony Brook argues. The Property fails to satisfy the criteria for exemption under the regulations, and as a consequence the Property is not exempt. Summary decision should therefore be entered in favor of DEP, Cambridge, and the Commission to affirm the SORAD, and against Stony Brook.

EVIDENCE

*2 The evidence in the administrative record is derived from pre-filed written testimony and exhibits submitted by the parties. The testimony is sworn to under the penalties of perjury, and thus materially equivalent to an affidavit. Pre-filed testimony was filed on behalf of the witnesses identified below.

For Stony Brook, testimony from the following witnesses is in the administrative record:

1. Timothy J. Williams. Williams is a Massachusetts licensed professional engineer, employed with Allen & Major Associates. Williams is a civil engineer who has knowledge of wetlands laws and has been involved in the permitting phase of the project. No educational background information was provided for him.
2. David Calhoun. Calhoun is a principal of Stony Brook. He provided historical information concerning the Property. No educational background information was provided for him.

For the Weston Conservation Commission testimony from the following witness is in the administrative record:

1. Michele Grzenda. Grzenda is employed as the Weston Conservation Commission Administrator. Grzenda has 10 years of experience as a conservation administrator and 7 years of experience as an environmental consultant. She has 21 years of experience in wetlands and water resources management. No educational background information was provided for her.

For DEP testimony from the following witness is in the administrative record:

1. Heidi Davis. Davis has been employed with DEP in its Division of Wetlands and Waterways Program since 1989. She has substantial experience in wetlands permitting and enforcement matters. She served as the primary point person for DEP's Northeast Regional Office in connection with the implementation of the Rivers Protection Act. She is a certified wetlands scientist and has a BA in environmental science.

BACKGROUND

On December 22, 2016, Stony Brook filed an Abbreviated Notice of Resource Area Delineation (“ANRAD”) to obtain an Order of Resource Area Delineation (“ORAD”) confirming the delineation of BVW and Riverfront Area.¹ The ANRAD is an appropriate procedural mechanism to determine regulatory jurisdiction under the Wetlands Protection Act and the Wetlands Regulations.

Indeed, the Wetlands Regulations at [310 CMR 10.05 \(3\)\(a\)](#) provide that any person who wishes to know whether the Wetlands Act applies to land or to work that may affect a resource area may file a request for a determination of applicability with the local conservation commission. Matter of Bosworth, Docket No. WET-2015-015, Recommended Final Decision (February 17, 2016), adopted by Final Decision (March 14, 2016). The request is sometimes referred to as an ANRAD, the acronym for “abbreviated notice of resource area delineation.” The process provides a procedure for a party to confirm the delineation of wetland Resource Areas that are identified on the plans filed with the conservation commission, [310 CMR 10.05\(4\)\(b\)2](#). In response, the conservation commission issues an ORAD, generally affirming or rejecting the ANRAD. An ORAD is binding as to the location of resource areas identified by the proponent. [310 CMR 10.05\(6\)\(a\)3](#), It is not binding with respect to resource

areas at the property that were not identified by the proponent. Bosworth, supra.; Matter of Boston Properties, LP, Docket No. WET 2004-012, Recommended Final Decision (May 4, 2012), adopted by Final Decision (May 11, 2012).

***3** ORADs are generally entitled to preclusive effect for a period of three years, or longer if they are extended. See Matter of Tompkins-Desjardins Trust, Docket No. WET-2010-035, Recommended Final Decision (April 1, 2011), adopted by Final Decision (April 7, 2011). The purpose of allowing a period for reliance upon the ORAD is to facilitate reasonable reliance and predictability for those affected by the ORAD property. Id.

Here, after holding hearings, the Commission issued an ORAD denying Stony Brook's request to exempt the Property under the Rivers Protection Act. Stony Brook appealed to DEP, requesting a SORAD. DEP issued a SORAD confirming the BVW delineation and confirming that the Property is not entitled to an exemption under the Rivers Act. The matter is now on appeal here, before OADR.

The Property consists of 2.09 acres, or 91,040.4 square feet. According to the SORAD, the Property contains upland area, Riverfront Area for Stony Brook, and Buffer Zone to BVW. Approximately 17,000 square feet of the Property is located within the Riverfront Area. Most of the Property is wooded. Davis PFT,² ¶ 23. Only one building, known as the historic Nathaniel Sibley House, is presently located on the Property. It sits far from Stony Brook, outside of the Riverfront Area on the upland portion of the Property.

Under the Wetlands Regulations and Wetlands Act, the Riverfront Area is the land between the mean annual high-water line of a perennial stream and a parallel line 200 feet away. G.L. c. 131 § 40; 310 CMR 10.58(2)(a); Matter of Skeffington, Docket No. WET 2009-049, Recommended Final Decision (March 30, 2010), adopted by Final Decision (April 9, 2010). Riverfront Area is likely to be “significant to protect the private or public water supply; to protect groundwater; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries.” 310 CMR 10.58(1). Land adjacent to rivers and streams can protect the natural integrity of these water bodies. The presence of natural vegetation within riverfront areas is critical to sustaining rivers as ecosystems and providing these public values. 310 CMR 10.58(1) and (3) (absent evidence to the contrary a Riverfront Area is presumed to be significant to the protection of these interests).

I discuss below the undisputed material facts in the light most favorable to Stony Brook. Beginning in about 1679, the area surrounding the Property was substantially developed by mills and related industrial purposes, particularly along Stony Brook. The estimated total surrounding mill area ranges from 73-150 acres. The Property was purchased in 1832 by Nathaniel Sibley, Henry Coolidge, and Joseph Treat. A mill existed on the bank of Stony Brook near but not on the Property until around the 1880s. By 1831, other buildings in the area but not on the Property included a saw mill, grist mill, cider mill, two barns, ice house, cattle shed, and piggerly.

***4** In about 1885, much of the Property was taken by laws enacted by the Massachusetts Legislature for the City of Cambridge water supply. Any mill related operations ceased at that time. Cambridge was consequently vested with certain water rights, resulting in the creation of the 75 acre Stony Brook Reservoir. It is undisputed that another mill-related building was not constructed on the Property from 1885 to the present. Williams PFT, ¶¶ 9-11; Exhibits 6, 7, 14, 15; Calhoun PFT, Exhibit 2.

The Site Plan in this appeal depicts evidence of 4 buildings on the Property— the existing Sibley House and remnants of 3 structures that were razed in or before the 1960s. The Sibley house remains on the upland portion of the Property, approximately 500 feet from the river. It is now used as an office building. All that is left of the 3 remaining structures are small remnants of stone foundations. There is uncontroverted evidence showing that by around 1940 to 1945 the Property was the homestead of Nathaniel L. Sibley, not a mill complex. Grzenda PFT, Exhibit 8. Of the three razed structures, the one closest to the river was what has been referred to as the Bigelow House, named after the apparent owner, Abraham Bigelow. It and the Sibley House may have been used for a period of time until the 1880s as boarding houses for mill employees. The evidence indicates

that a corner of the Bigelow House may have touched or slightly extended into the 200 foot Riverfront Area. Williams PTT, Exhibit 21; Davis PFT, ¶ 36.

Aside from the Sibley house, the remainder of the Property consists primarily of woods, in addition to paved parking and access driveways. Stony Brook is a perennial stream located southeast of the Property on land owned by Cambridge. It discharges into the Stony Brook Reservoir, which is located south of the site and is owned by Cambridge.

STANDARD OF REVIEW

The Adjudicatory Rules, [310 CMR 1.01\(1\)\(f\)](#), provide for the issuance of summary decision where the pleadings together with the affidavits (or pre-filed written testimony) show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor as a matter of law. See *Matter of Papp*, Docket No. DEP-05-066, Recommended Final Decision, (November 8, 2005), adopted by Final Decision (December 27, 2005); *Matter of Lowes Home Centers Inc.*, Docket No. WET-09-013, Recommended Final Decision (January 23, 2009), adopted by Final Decision (February 18, 2009). A motion for summary decision in an administrative appeal is similar to a motion for summary judgment in a civil lawsuit. See *Matter of Lowe's Home Centers, Inc.*, *supra*, (citing [Massachusetts Outdoor Advertising Council v. Outdoor Advertising Board](#), 9 Mass. App. Ct. 775, 785-86 (1980)).

DISCUSSION

I. Section 18 of the Rivers Protection Act is not Applicable as an Exemption

The Rivers Act. This appeal is grounded in the Rivers Protection Act and whether DEP properly implemented the historic mill complex exemption in the Rivers Act. In 1996, the Wetlands Act, [G.L. c. 131 § 40](#), was amended by the Rivers Protection Act, Chapter 258 of the Acts of 1996. The Rivers Protection Act created the Riverfront Area as a new protected resource area under the Wetlands Act. See [310 CMR 10.02\(1\)](#). When it enacted the Rivers Protection Act the legislature stated that its purposes are “to protect the private or public water supply; to protect the groundwater; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect fisheries,” Rivers Act, § 1. The Rivers Act is not intended to diminish the protections and exemptions provided in [G.L. c. 131 § 40](#). Rivers Act, § 1.

*5 When the legislature drafted the Rivers Protection Act it included Section 18, which relates to when “historic mill complexes” are exempt from the Riverfront Area. Section 18 specifically provides the following:

The riverfront area shall not include land now or formerly associated with historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford in existence prior to nineteen hundred and forty-six and situated landward of the waterside face of a retaining wall, building, sluiceway, or other structure existing on the effective date of this act. (emphasis added)

At the same time it enacted the Rivers Act, the legislature also delegated to DEP the obligation to “adopt such regulations as are deemed necessary to carry out the purposes of this act.” Rivers Act, § 4 (emphasis added). The legislature also required that the regulations adopted by DEP “shall be filed with the joint committee on natural resources and agriculture sixty days prior to their effective date ...” Rivers Act, § 4. The Rivers Act further required DEP to create a “riverfront advisory committee for the purpose of participating in the review of the rules and regulations promulgated pursuant to the provisions of § 4 of the th[e] act.” The act prescribed the committee's membership. Rivers Act, § 11.

DEP's Regulatory Promulgation Process. DEP followed the legislative directive and amended the Wetlands Regulations with: [310 CMR 10.58](#), which regulates the Riverfront Area created by the Rivers Act, and the definition of Historic Mill Complex in [310 CMR 10.04](#). See Preface: 1997 Regulatory Revisions for the Rivers Protection Act Amendments to the Wetlands Protection Act (summarizing the regulations and the regulatory development process). DEP's rulemaking process included the "Riverfront Advisory Committee," which, as required by the Rivers Act, was comprised of: "four representatives of environmental organizations, a developer, and a representative for real estate, agriculture and aquaculture interests. Three committee members owned land within the riverfront area. The committee met biweekly from January through April, 1997." 1997 Preface, § II.

"The Department also had the benefit of comments from other knowledgeable individuals from the development, environmental, and legal communities. The Department held seven public hearings in May 1997 and received over 1,200 pages of comments from citizens, environmental organizations and development interests." 1997 Preface, § II.

DEP engaged in a robust drafting and rulemaking process, as exemplified above and by the "Riverfront Advisory Committee Meeting Summary" from the January 31, 1997 meeting. DEP Motion, Exhibit 5. Topics for discussion included, among other things, the historic mill complex exemption and the need to define "'historic mill complexes," such as: how to "better define the limits of the parcel," "limits to the area covered by the exemption," and how to encourage redevelopment. *Id.* At that particular meeting, 22 people were present. *Id.*

*6 In the Preface to the Riverfront Area regulations, DEP stated that while it was drafting and promulgating the regulations it "received comments expressing many conflicting views of the legislative intent behind the Rivers Protection Act. [DEP stated that] [t]he regulations are designed to implement the statute by providing clear procedures and substantive criteria to guide applicants, conservation commissions, and Department staff from project design through the decision making process. The new provisions governing riverfront areas are located at [310 CMR 10.58](#); the variance provisions formerly at [310 CMR 10.58](#) and [10.36](#) have been moved to [310 CMR 10.05 \(10\)](#)." 1997 Preface, § III (emphasis added).

The regulations were promulgated July 25, 1997, and became effective October 6, 1997, after the 60 mandatory legislative review period "with the joint committee on natural resources and agriculture" expired. Rivers Act, § 4.

The regulations contain an extensive discussion of the importance of the Riverfront Area, providing that it is:

likely to be significant to protect the private or public water supply; to protect groundwater; to provide flood control; to prevent storm damage; to prevent pollution; to protect land containing shellfish; to protect wildlife habitat; and to protect the fisheries. Land adjacent to rivers and streams can protect the natural integrity of these water bodies. The presence of natural vegetation within riverfront areas is critical to sustaining rivers as ecosystems and providing these public values. The riverfront area can prevent degradation of water quality by filtering sediments, toxic substances (such as heavy metals), and nutrients (such as phosphorus and nitrogen) from stormwater, nonpoint pollution sources, and the river itself. Sediments are trapped by vegetation before reaching the river. Nutrients and toxic substances may be detained in plant root systems or broken down by soil bacteria. Riverfront areas can trap and remove disease-causing bacteria that otherwise would reach rivers and coastal estuaries where they can contaminate shellfish beds and prohibit safe human consumption. Natural vegetation within the riverfront area also maintains water quality for fish and wildlife.

[310 CMR 10.58\(1\)](#).

“Although Massachusetts has almost 9000 miles of rivers, the riverfront area is less than one percent of the state's total acreage. The purpose of the Rivers Protection Act is to preserve the natural integrity of rivers and adjacent land for the important values these areas provide to all citizens of the Commonwealth.” 1997 Preface, § I.

Pursuant to the Rivers Act's charge for DEP to draft regulations it “deemed necessary to carry out the purposes of th[e] act”³ DEP promulgated regulations pertaining to the “historic mill complex” exemption that originated in Section 18 of the Act. Thus, DEP promulgated provisions “[e]xempt[ing]” or “[g]randfather[ing]” certain activities or areas, including “[a]ctivities within an Historic Mill Complex,” [310 CMR 10.58\(6\)\(k\)](#). The phrase “Historic Mill Complex was undefined in the Rivers Act, and so DEP defined it in the regulations as follows:

*7 Historic Mill Complex means the mill complexes in, but not limited to, Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford in existence prior to 1946 and situated landward of the waterside facade of a retaining wall, building, sluiceway, or other structure existing on August 7, 1996. An historic mill complex also means any historic mill included on the Massachusetts Register of Historic Places. An historic mill complex includes only the footprint of the area that is or was occupied by interrelated buildings (manufacturing buildings, housing, utilities, parking areas, and driveways) constructed before and existing after 1946, used for any type of manufacturing or mechanical processing and including associated structures to provide water for processing, to generate water power, or for water transportation.

[310 CMR 10.04](#) (Historic Mill Complex definition).

Application of the Regulatory Exemption. At first blush, the resolution of this appeal would seem to be straightforward: DEP followed the legislative directive and process to promulgate regulations to implement the “purposes” of the Rivers Protection Act. Ordinarily, and absent an ambiguity, the plain meaning of those regulations is controlling. Matter of Sullivan, Docket No. WET 2011-013, Recommended Final Decision (May 31, 2011), adopted by Final Decision (June 22, 2011); Matter of Milton, Docket No. WET 2011-030, Recommended Final Decision (March 29, 2012), adopted by Final Decision (April 6, 2012).

Stony Brook, however, contends that to follow that path in this appeal would be a mistake. It argues that DEP's regulations exempting historic mill complexes is inconsistent with and distinctly different from the historic mill complex exemption in the Rivers Protection Act. It believes that the statutory exemption in Section 18 of the Rivers Act is much broader than DEP's regulatory exemption. As a consequence, it contends that the apparent conflict should be dealt with by harmonizing the regulation and the statute to create *two different* exemptions, a regulatory exemption and a statutory exemption. In brief, it argues that the statutory exemption applies to “land now or formerly associated with historic mill complexes.” In contrast, the regulatory exemption applies to “[a]ctivities within an Historic Mill Complex.” [310 CMR 10.58\(6\)\(k\)](#), Stony Brook argues that I should apply only the statutory exemption to the Property, as no “activities” have yet been proposed for the Riverfront Area and the statutory exemption is broader. Stony Brook argues that the entire 2.1 acres is exempt because it includes “land now or formerly associated with historic mill complexes.”⁴

There are a number of reasons why Stony Brook's position is without merit. The first is that there is no indication that DEP intended its historic mill regulatory exemption to be a distinctly different exemption from the statutory exemption. Instead, what is abundantly clear is that DEP intended to follow through on its legislative charge to promulgate regulations to implement the purposes of the Rivers Act as an amendment to the Wetlands Act, and not create an exemption that is in addition to the exemption in the statute. In fact, the Wetlands Regulations state: “As of October 6, 1997, the revised [310 CMR 10.00](#) must be

used to implement the Rivers Protection Act.” 1997 Preface, § II. Under these circumstances, the regulatory implementation of a legislative directive is typically controlling.

*8 Moreover, Stony Brook's argument itself is internally inconsistent. There is no rational reason to create two exemptions, one applying simply to land and one applying to activities within the footprint of historic mill complexes. A broader statutory “land” exemption would subsume the narrower regulatory activities exemption, i.e., the land exemption would swallow the activities exemption, rendering it superfluous. Also important is that with the Rivers Act the legislature was acting to expand wetlands protection (to Riverfront Areas) and carve out an exemption in those newly created Riverfront Areas for historic mill complexes. The intention was not, as Stony Brook advocates, to carve out a blanket protection for land associated with historic mill complexes regardless whether the mill complex is in the Riverfront Area or regardless of when the mill complex purportedly existed.⁵ Indeed, that would exceed DEP's own jurisdiction and the bounds of jurisdiction under the Wetlands Act and Wetlands Regulations. It would also be contrary to the purpose of the River Act and violate the axiom that exemptions are to be narrowly construed. [Woods v. Executive Office of Communities and Development](#), 411 Mass. 599, 604-605 (1992) (statutory exception is to be narrowly construed).

Further, Stony Brook's argument for a statutory land exemption *and* a regulatory activities exemption sets up a false dichotomy under the Wetlands Act and the Wetlands Regulations, which the legislature explicitly intended as the regulatory foundation. The reference to “activities” is a jurisdictional trigger that applies throughout the Wetlands Regulations *and* the Wetlands Act to the other wetlands resource areas identified in the Wetlands Act and the Wetlands Regulations. Before the Rivers Act, the wetlands resource areas included: bank, fresh water wetland, coastal wetland, beach, dune, flat, marsh, meadow or swamp bordering on the ocean or on any estuary, creek, river, stream, pond, or lake, or any land under said waters or any land subject to tidal action, coastal storm flowage, or flooding, [G.L. c. 131 § 40, ¶ 1](#); [310 CMR 10.02\(1\)](#). These wetlands regulatory schemes did not protect the land or areas per se. Instead, and in *general*, they regulated certain activities in those areas. Broadly speaking, there is no jurisdiction under the Wetlands Regulations or the Wetlands Act until there is an alteration, work, or activity occurring or to be proposed in jurisdictional wetland resource areas. The Wetlands Act itself states in pertinent part: “No person shall remove, fill, dredge or alter [a Wetlands Resource Area] ... without filing written notice of his intention to so remove, fill, dredge or alter, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without receiving and complying with an order of conditions and provided all appeal periods have elapsed. Said notice shall be filed ... in which the proposed activity is to be located ...” [G.L. c. 131 § 40, ¶ 1](#) (emphasis added). The Regulations are similarly replete with references to “activity” as a jurisdictional trigger. See e.g. [310 CMR 10.01\(2\)](#); [310 CMR 10.02\(2\)](#); [310 CMR 10.03\(7\)\(c\)](#); [310 CMR 10.04](#) (Agriculture(b)); [310 CMR 10.04](#) (General Performance Standards); [310 CMR 10.04](#) (Project Site); 10.58.

*9 The regulations at [310 CMR 10.02\(2\)](#) articulate in detail the “Activities Subject to Regulation under [M.G.L. c. 131 § 40](#).” So when the legislature enacted the Rivers Act to amend the Wetlands Act to include Riverfront Area as a resource area it set forth the general purpose for the historic mill exemption but explicitly left implementation of that exemption to DEP, which correctly confined jurisdiction to *activities* within the Riverfront Area. Like other resource areas, it's not the land itself within the Riverfront Area that is regulated, instead it is certain activities in those areas. As a consequence, Stony Brook's distinction between the regulation of land versus the regulation of activities sets up a false choice. The legislature explicitly charged DEP with implementing the Legislature's Riverfront Area amendment to the Wetlands Act through the Wetlands Regulations, both of which only regulate activities that “remove, fill, dredge or alter” the protected resource areas.

This conclusion is consistent with two prior DEP Final Decisions. In one, the Final Decision specifically rejected similar reasoning that was articulated by an administrative law judge before the parties reached a settlement agreement, which mooted the appeal itself. Nevertheless, in the Final Decision approving the settlement agreement the Commissioner specifically rejected and disavowed the administrative law judge's decision. See [Matter of James Knott, Sr.](#), Docket No. 2001-48, Final Decision (November 22, 2002) (incorporating settlement agreement and specifically rejecting in a footnote the Recommended Final Decision and its reasoning that advanced arguments similar to those proffered by Stony Brook.); see also [Northpoint Realty Development Corp.](#), Docket No. 2001-064, Ruling On Motions for Summary Decision (March 4, 2003) (recognizing, without detailed analysis, that the regulatory exemption “codifies the statutory” exemption, which is to be “narrowly construed”).

The Regulation is Consistent with the Statutory Charge. Stony Brook advances other arguments why it believes DEP's regulatory exemption of Historic Mill Complexes is inconsistent with and exceeds the authority of the historic mill exemption of Section 18 of the Rivers Act. Given Stony Brook's articulated inconsistency between the statute and the regulation and its challenge to the validity of the regulation, I turn to principles of interpretation established by the courts. Although Stony Brook has not argued the regulations are wholly invalid, its argument asserts that the regulation is inconsistent with the statute and the statutory purpose, and is not applicable to the Property. As a consequence, the regulatory validity test is applicable. I therefore apply the two-part framework used to determine whether regulations promulgated by an agency are valid.

The first part of the framework is to employ the “conventional rules of statutory interpretation” to determine “whether the Legislature has spoken with certainty on the topic in question.” [Goldberg v. Board of Health of Granby](#), 444 Mass. 627, 632-633, 830 N.E.2d 207 (2005); see [Mass. Teachers' Ret. Sys. V. Contributory Ret. Appeal Bd.](#), 466 Mass. 292, 994 N.E.2d 355, 362 (2013). When the court determines that a statute is unambiguous the court gives effect to the legislature's intent. [Navy Yard Four Associates, LLC v. Department of Environmental Protection](#), 88 Mass. App. Ct. 213, 37N.E.3d 46 (2015).

*10 Second, if “the Legislature has not directly addressed the issue and the statute is capable of more than one rational interpretation, [the tribunal must] proceed to determine whether the agency's interpretation may be reconciled with the governing legislation”. [Bio gen IDEC MA, Inc. v. Treasurer & Receiver Gen.](#), 454 Mass. 174, 187, 908 N.E.2d 740 (2009) (quotation and citation omitted); [Goldberg](#), 908 N.E.2d at 213. The “second stage of [[the] analysis requires ‘substantial deference’ to the expertise and statutory ‘interpretation of [the] agency charged with primary responsibility’ for administering a statute.” [Goldberg](#), 908 N.E.2d at 213. “At the second stage, regulations ‘are not to be declared void unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.’” [Goldberg](#), 908 N.E.2d at 213 (quoting [Berrios v. Department of Pub. Welfare](#), 411 Mass. 587, 595, 583 N.E.2d 856(1992)).

Statutory Ambiguity and Deference. During the rulemaking process DEP properly recognized that the Rivers Act's exemption for historic mill complexes is ambiguous and DEP sought to clarify that while remaining consistent with the purpose of the Rivers Act. That DEP recognized this ambiguity during the drafting process and sought to clarify it is exemplified by the DEP “Riverfront Advisory Committee Meeting Summary” from the January 31, 1997 meeting. DEP Motion, Exhibit 5. Topics for discussion included, among other things, the historic mill complex exemption and the need to define “historic mill complexes,” such as: how to “better define the limits of the parcel,” “limits to the area covered by the exemption,” and how to encourage redevelopment. *Id.* At that particular meeting, 22 people were present. *Id.*

Section 18 of the Rivers Act is ambiguous. It references “land now or formerly associated with historic mill complex ...” This ambiguous phrase raises a number of questions, the first being what is an “historic mill complex?” Second, what does it mean for land to be now or formerly associated with an historic mill complex? Does it mean land that at anytime in history, even as far back as the 1600s, that had some association with an historic mill complex is exempt? Does that include an association that is as tenuous as an area where millworkers lived, socialized, or shopped, regardless whether there was a physical association between that land and the actual mill complex? Does it include land that was used for storage of materials for the mill complex but never actually occupied by a mill complex? Does it include land that was associated with an historic mill complex for only a very small period of time? Does it include land that served only as a dumping ground for the mill complex or a source of timber for building? Thus, the statutory ambiguity is readily apparent.

*11 And what is meant by the statute's reference to “historic mill complexes including, but not limited to, the mill complexes in the Cities of Holyoke, Taunton, Fitchburg, Haverhill, Methuen and Medford in existence prior to nineteen hundred and forty-six ... ?” Does it mean, as Stony Brook argues, based upon the prior antecedent rule, that the temporal limitation of 1946 applies only to the mill complexes in those specifically identified cities, and otherwise there is no 1946 temporal limitation in the statute?

Given this ambiguity, the second stage of the test requires me to determine “whether the agency's interpretation may be reconciled with the governing legislation”. [Biogen IDEC MA, Inc. v. Treasurer & Receiver Gen.](#), 454 Mass. 174, 187, 908

N.E.2d 740 (2009) (quotation and citation omitted); [Goldberg](#), 908 N.E.2d at 213. There must be “substantial deference” to DEP’s interpretation and the regulations ‘are not to be declared void unless their provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate.’” [D’ Goldberg](#), 908 N.E.2d at 213 (quoting [Berrios v. Department of Pub. Welfare](#), 411 Mass. 587, 595, 583 N.E.2d 856 (1992)). The ultimate question is whether the policy embodied by the agency’s interpretation is “reasonable.” [Bio gem](#) 454 Mass. at 187.

There are several guideposts—all applicable here—to consider in determining whether DEP’s regulation is reasonable. “In examining the regulatory response to statutory silence or ambiguity, it is unimportant whether [a court] would have come to the same interpretation of the statute as the agency.” [Goldberg](#), 908 N.E.2d at 213 (emphasis added). “Statutory silence, like statutory ambiguity, often requires that an agency give clarity to an issue necessarily implicated by the statute but either not addressed by the Legislature or delegated to the superior expertise of agency administrators.” [Goldberg](#), 908 N.E.2d at 214. “Administrative agencies are more suited to the task of clarifying the Legislature’s plan through specific rules, and more able to provide for ‘consistency and coherence,’ than are courts... [Judicial] deference is especially appropriate where, as here, the statutes in question involve an explicit, broad grant of rule-making authority.” [Goldberg](#), 908 N.E.2d at 214.

Although an agency may only exercise “the powers and duties expressly conferred upon it by statute and such as are reasonably necessary to carry out its mission ... a plaintiff challenging the validity of an agency’s regulations has a formidable burden.” [Biogen](#), 454 Mass. at 187 (internal citation omitted).

“Statutory silence, like statutory ambiguity, often requires that an agency give clarity to an issue necessarily implicated by the statute but either not addressed by the Legislature or delegated to the superior expertise of agency administrators.” [Goldberg](#), 444 Mass. at 634 (emphasis added); see [Middleborough v. Housing Appeals Comm.](#), 449 Mass. 514, 523, 870 N.E.2d 67 (2007).

*12 Additional deference to regulations as being within the legislative intent is accorded when the legislature retains, as here, the opportunity to review the regulations but does not exercise its authority to challenge and alter those regulations. [Navy Yard Four](#), 37 N.E.3d at 55; [MRI Assocs., Inc. v. Department of Pub. Health](#), 70 Mass. App. Ct. 337, 342 n.8, 874 N.E.2d 419 (2007). “Deference to an agency’s interpretation of statutory silence, or ambiguity, is particularly appropriate where, as here, the regulation in question was promulgated immediately after the enactment of the governing legislation.” [Mass. Teachers’ Ret. Sys. v. Contributory Ret. Appeal Bd.](#) 466 Mass. 292, 994 N.E.2d 355, 362 (2013). Additional deference is provided when “the record indicates that [the regulation] was the product of ‘thoughtful, reasoned deliberation,’ and not ‘rash, uninformed rule making ...’” [Mass. Teachers’ Ret. Sys. V. Contributory Ret. Appeal Bd.](#), 994 N.E.2d at 362.

All of the preceding guideposts militate in favor of upholding DEP’s regulations for historic mill complexes: The legislature specifically required DEP to draft implementing regulations; DEP promptly drafted those regulations; DEP utilized a rigorous public deliberative process; the legislature reserved an opportunity to review the regulations prior to becoming effective; and the legislature left the regulations unchanged, indicating its assent. This properly promulgated regulation is “not to be declared void unless [its] provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate,” [Dowell v. Commissioner of Transitional Assistance](#), 424 Mass. 610, 613 (1997); [Consolidated Cigar Corp. v. Department of Public Health](#), 372 Mass. 844, 850 (1977) (agency has considerable leeway in interpreting a statute is charged with enforcing).

DEP’s historical mill complex regulation is reasonable and consistent with Section 18 of the Rivers Act. First, it addresses the *temporal* requirements for an historic mill complex. It references the historic mill complexes in Holyoke, Taunton, Fitchburg, Haverhill, Methuen, and Medford as examples, without limitation, of exempt historic mill complexes if they were in existence as of 1946; this is a reasonable construction of the statute. The regulation also reasonably establishes that the historic mill complex, i.e., the interrelated buildings making up the complex, must have been in existence on the effective date of the Rivers Act, August 7, 1996, as specifically required by the statute (“existing on the effective date of this act”).

Last, the regulation defines “mill complex” including the surface area of land, as the statute frames it, “now or formerly associated” with the mill complex. The regulation defined that to be “only the footprint of the area that is *or was* occupied

by interrelated buildings (manufacturing buildings, housing, utilities, parking areas, and driveways) constructed before and existing after 1946, *used* for any type of manufacturing or mechanical processing and including associated structures to provide water for processing and including associated structures to provide water for processing to generate water power, or for water transportation.” (emphasis added) This recognizes the statute’s inclusion of land that was “formerly associated” with the complex by stating that such land may be included in the regulatory exemption if it “was” occupied by interrelated areas and “used” for the specified purposes, assuming the other criteria are met. It also recognizes that “complex” generally means interrelated or interconnected.⁶

***13** This is an entirely reasonable interpretation of an otherwise ambiguous provision that implements the legislature’s desire to exempt certain areas from the Riverfront Area in order to encourage development of historic complexes. It accomplishes that objective while also serving the broader, overarching purpose of the Rivers Act—the protection of rivers and the Riverfront Area that acts to naturally enhance and preserve rivers. Indeed, exempting areas outside the DEP definition would possibly, in many cases, not serve the purpose of encouraging development of historic complexes nor the protection of the river. Instead, it could serve to arbitrarily exempt areas that had little connection to a mill complex and are not in need of incentives for development.

Stony Brook makes a number of arguments that are without merit. Stony Brook contends that the 1946 date found in the statute “applies to a specific universe of listed cities cited with mills in the statute rather than to all historic mills based upon accepted rules of statutory interpretation of antecedent phrases and the precise use of commas.” Stony Brook motion, p. 13 (citing Knott). It argues that the modifying clause in the statute—“in existence prior to nineteen hundred and forty-six”—applies only to the immediately precedent mills in the referenced cities and towns and not to all historic mills. Stony Brook motion, p. 13. It adds that if the legislature had inserted a comma after “Medford” the phrase “in existence prior to nineteen hundred and forty six” would have referred not only to mill complexes located in the listed cities but, as well, to any of the historic mill complexes of which those in the listed cities are a subset, regardless of their location. Stony Brook concludes that because no comma follows the list of cities, the phrase following the list of cities modifies the list of cities that precedes it. This is sometimes referred to as the last antecedent rule.

Stony Brook argues that the list of cities is the “last antecedent.” If the legislature intended the exemption to apply only to those mills in existence in 1946 and 1996, it would not need to reference the cities and towns. Stony Brook motion, p. 13. Moreover, Stony Brook adds, the legislature would not have used the terms “now” or “formerly” if it had intended to exempt mill complexes in existence in 1946 and 1996. All statutory terms must be given effect. Stony Brook motion, p. 14 (citing [Recinos v. Escobar](#), 473 Mass. 734 (2016), and similar decisions).

Thus, Stony Brook concludes that the term “associated with” means “joined, connected, or related.” Stony Brook motion, p. 14 (citing Knott). As a consequence, here, the exempt property includes the entire 2.09 acres “which was used by the community for mill work, boarding, growing and harvesting crops and day to day activities.” Stony Brook motion, p. 14.

***14** Stony Brook introduced evidence from which one could conclude that by 1845 the area surrounding the Property, perhaps as much as 73 to 150 acres, was an active mill site complex. Some buildings were in operation until 1884 when property was taken to create the Stony Brook Reservoir for Cambridge. “[A]t least one building was operational prior to and after 1946 until its destruction in the 1960s.” Stony Brook motion, p. 9; Williams PFT, ¶¶ 8-20. Stony Brook asserts that “there is overwhelming evidence to find that the mill complex uses took place on the entire Property ... and that it is exempt from the definition of ‘Riverfront Area’” Stony Brook motion, p. 9; Williams PFT.

Stony Brook’s argument, however, would have the absurd result of confining the 1946 qualification to a small number of cities, while leaving no temporal restriction for the remainder of the Commonwealth, a result that seems quite arbitrary. There is no apparent rational basis to impose the temporal limitation solely upon those cities, and meanwhile exempt other Riverfront Areas with no temporal limitation, which would be contrary to the main objective of protecting Riverfront Areas. Indeed, “it is a well-established canon of statutory construction that a strictly literal reading of a statute should not be adopted if the result will be to thwart or hamper the accomplishment of the statute’s obvious purpose, and if another construction which would avoid this

undesirable result is possible.” [Watros v. Greater Lynn Mental Health and Retardation Ass'n, Inc.](#), 421 Mass. 106, 113(1995). In contrast, it would have been rational for the legislature to have a temporal limitation that is equally applicable throughout the Commonwealth. It seems equally rational that the historic mill complexes would have had to at least been in existence at the time the statute was enacted, which is the implicit temporal limitation that DEP made explicit in the regulations—August 7, 1996.

With respect to the last antecedent rule, it is important to remember that “when the intent of the Legislature is not evident based solely on the words of a statute, extrinsic aids may be helpful but they do not supply hard and fast rules. The last antecedent rule is not always a certain guide.” [New England Survey Systems, Inc. v. Department of Industrial Accidents](#), 89 Mass. App. Ct. 631, 638-39, 53 N.E.3d 675, 681-82 (2016) (citing [Selectmen of Tonsfield v. State Racing Commn.](#), 324 Mass. 309, 312, 86 N.E.2d 65 (1949); [Globe Newspaper Co. v. Boston Retirement Bd.](#), 388 Mass. 427, 432, 446 N.E.2d 1051 (1983)). “In particular, we do not apply the last antecedent rule when “there is something in the subject matter or dominant purpose [of the statute] which requires a different interpretation.” [New England Survey Systems](#), *supra*. (citing [Hopkins v. Hopkins](#), 287 Mass. 542, 547, 192 N.E. 145 (1934)). The last antecedent rule “is not an absolute and can assuredly be overcome by other indicia of meaning.” [ENGIE Gas & LNG LLC v. Department of Public Utilities](#), 475 Mass. 191, 199, 56 N.E.3d 740, 747-48 (2016) (quoting [Barnhart v. Thomas](#), 540 U.S. 20, 26, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)). Applying the last antecedent rule here would lead to the absurd result discussed above and would seriously undermine the overarching purpose of the Rivers Act.

*15 For all the above reasons, Section 18 of the Rivers Act does not apply as an exemption for an historic mill complex.

II. No Part of the Riverfront Area is Exempt Pursuant to the Historic Mill Complex Exemption in 310 CMR 10.58(6)(k) and 310 CMR 10.04

The undisputed material facts demonstrate that no part of the Riverfront Area is exempt pursuant to the Historic Mill Complex exemption in 310 CMR 10.58(6)(k) and 310 CMR 10.04. The evidence, viewed in the light most favorable to Stony Brook, failed to evidence an historic mill complex that was in existence before 1946 and until at least August 7, 1996. Instead, the evidence demonstrates that any mill complex that was arguably associated with the Property failed to exist after the property taking in the 1880s for the City of Cambridge water supply. After that, the Property was put to use for other purposes, including a homestead. In addition, the undisputed material facts fail to demonstrate that any part of the Riverfront Area includes the footprint of the area that is or was occupied by interrelated mill buildings (manufacturing buildings, housing, utilities, parking area, and driveways) in existence by 1946 and until at least August 7, 1996.

In fact, the only evidence of a mill-related use in the Riverfront Area was a partial foundation of a corner of the Bigelow house in the Riverfront Area which may have been used for housing mill employees. But it is undisputed that it was not in existence as of August 7, 1996. After the destruction of the Bigelow House in the early 1960s no structures existed at the Property except the Sibley House, which is located outside of the Riverfront Area. Grzenda PFT, ¶¶ 13.

For the above reasons, there is no genuine issue of material fact that any part of the Riverfront Area is exempt under 310 CMR 10.58(6)(k) and 10.04. In addition, as discussed in section I, the Rivers Act, Section 18, does not apply as an exemption. Therefore, the DEP Commissioner should issue a Final Decision affirming the SORAD.

NOTICE-RECOMMENDED FINAL DECISION

This decision is a Recommended Final Decision of the Presiding Officer. It has been transmitted to the Commissioner for his Final Decision in this matter. This decision is therefore not a Final Decision subject to reconsideration under 310 CMR 1.01(14)(d), and may not be appealed to Superior Court pursuant to M.G.L. c. 30A. The Commissioner's Final Decision is subject to rights of reconsideration and court appeal and will contain a notice to that effect.

Because this matter has now been transmitted to the Commissioner, no party shall file a motion to renew or reargue this Recommended Final Decision or any part of it, and no party shall communicate with the Commissioner's office regarding this decision unless the Commissioner, in his sole discretion, directs otherwise.

Timothy M. Jones
Presiding Officer

Footnotes

- 1 Stony Brook has filed a Comprehensive Permit with the Town of Weston Zoning Board of Appeals seeking to construct 150 rental units in an 8 story building on the Property outside the Riverfront Area.
- 2 “PFT” is the acronym for pre-filed testimony.
- 3 Rivers Act, § 4 (emphasis added).
- 4 Stony Brook's assertion that the Wetlands Regulations for historic mill complexes are not consistent with the Rivers Protection Act may properly be considered in this forum. See Matter of SEMASSNext Hit Partnership, OADR Docket No. 2012-015, Recommended Final Decision (June 18, 2013), adopted by Final Decision (June 24, 2013).
- 5 Stony Brook argues that its entire 2.1 acre land should be “exempt.” Stony Brook Motion, pp. 1,4 (statutory exemption includes entire 2.1 acre area).
- 6 complex. Dictionary.com. Dictionary.com Unabridged. Random House, Inc. <http://www.dictionary.com/browse/complex> (accessed: May 21, 2018).

2018 WL 6040701 (Mass.Dept.Env.Prot.)



Office of the
Board of Assessors
Robbins Memorial Town Hall
Arlington, MA 02476
(781) 316-3050
Assessors@town.arlington.ma.us

Abutters List

Date: May 06, 2020

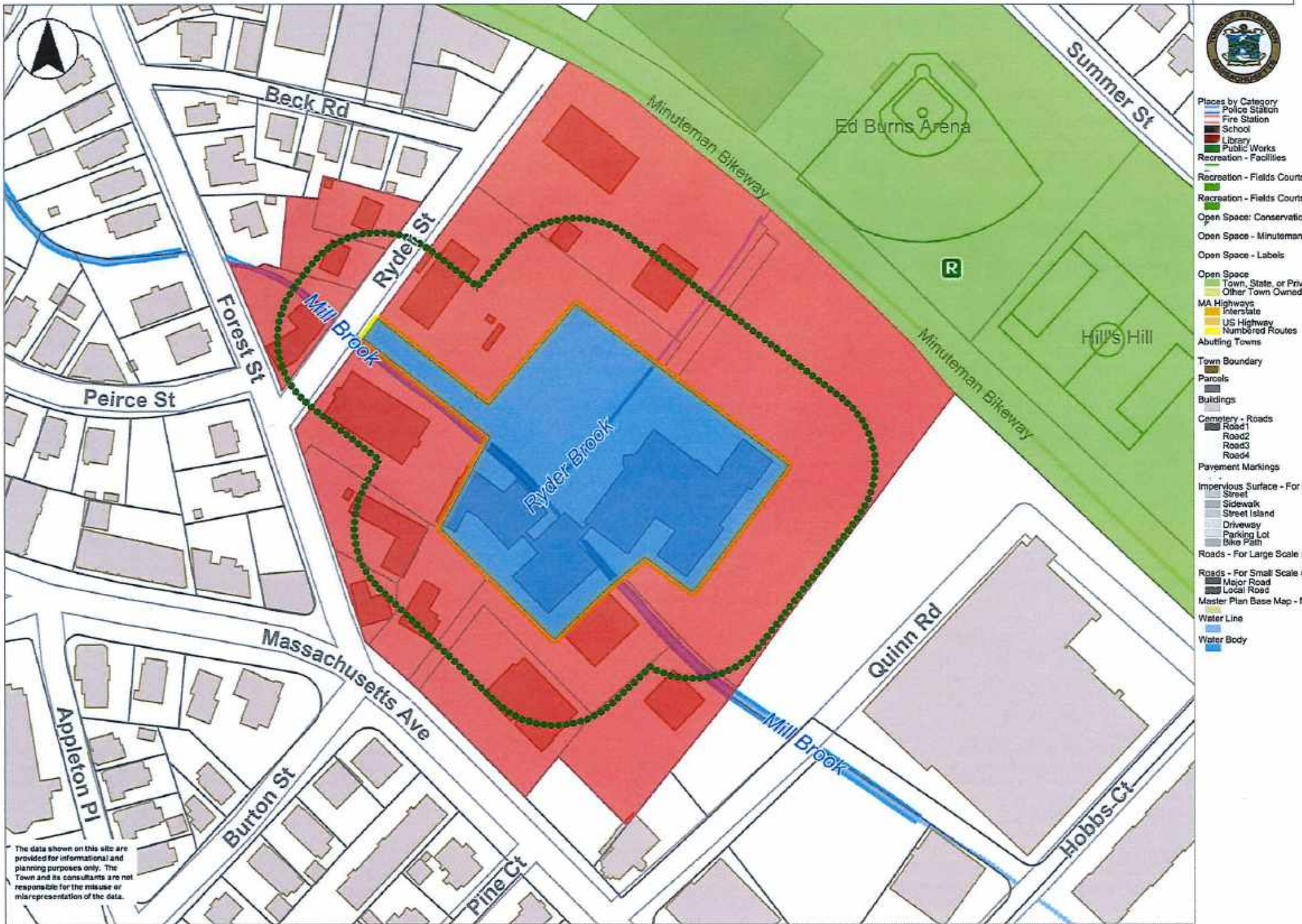
Subject Property Address: 1165-1167 MASS AVE Arlington, MA
Subject Property ID: 57-2-10.B

Search Distance: 100 Feet - Conservation

The Board of Assessors certifies the names and addresses of requested parties in interest, all abutters to a single parcel within 100 feet.

Kevin S. Feeley
Robert E. Greeley
[Signature]

Board of Assessors



The data shown on this site are provided for informational and planning purposes only. The Town and its consultants are not responsible for the misuse or misrepresentation of the data.

Abutters List

Date: May 06, 2020

Subject Property Address: 1165-1167 MASS AVE Arlington, MA

Subject Property ID: 57-2-10.B

Search Distance: 100 Feet

Prop ID: 57-2-11

Prop Location: 15 RYDER ST Arlington, MA

Owner: LALICATA REALTY LLC

Co-Owner:

Mailing Address:

15 RYDER ST

ARLINGTON, MA 02476

Prop ID: 57-2-11.B

Prop Location: 33 RYDER ST Arlington, MA

Owner: TOWN OF ARLINGTON PARK

Co-Owner:

Mailing Address:

730 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-13

Prop Location: 5 FOREST ST Arlington, MA

Owner: NEIL L CROWLEY LLC

Co-Owner:

Mailing Address:

18 CRANES CT

WOBBURN, MA 01801

Prop ID: 57-2-15

Prop Location: 0-LOT RYDER ST Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-15.A

Prop Location: 1171 MASS AVE Arlington, MA

Owner: ANNESE ROBERT J TR J-JUDITH

Co-Owner: 1171 MASS AVE REALTY TRUST

Mailing Address:

2 SHIRE LANE

BEDFORD, MA 01730

Prop ID: 57-2-15.B

Prop Location: 1173 MASS AVE Arlington, MA

Owner: HOUSING CORPORATION OF

Co-Owner: ARLINGTON

Mailing Address:

252 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-15.C

Prop Location: 0-LOT RYDER ST Arlington, MA

Owner: MIRAK TRUCK CENTER LLC

Co-Owner:

Mailing Address:

1151 R MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-16

Prop Location: 1165 MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-16.A

Prop Location: 1155-R MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-16.B

Prop Location: 1151-R MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-7.B

Prop Location: 14 RYDER ST Arlington, MA

Owner: WEBER NICOLE R

Co-Owner:

Mailing Address:

14 RYDER ST

ARLINGTON, MA 02476

Prop ID: 57-2-7.C

Prop Location: 18 RYDER ST Arlington, MA

Owner: DESHPANDE NAREN/ANUJA

Co-Owner:

Mailing Address:

18 RYDER STREET

ARLINGTON, MA 02476

Prop ID: 57-2-8.A

Prop Location: 23 FOREST ST UNIT A Arlington, MA

Owner: ERICKSON KAREN

Co-Owner: TAYLOR THOMAS

Mailing Address:

23 FOREST STREET #A

ARLINGTON, MA 02476

Prop ID: 57-2-8.B

Prop Location: 23 FOREST ST UNIT B Arlington, MA

Owner: TEE ALEXANDER K

Co-Owner:

Mailing Address:

2 RYDER STREET UNIT B

ARLINGTON, MA 02476

Prop ID: 57-2-10.B**Prop Location: 1165-1167 MASS AVE Arlington, MA****Owner: ARLINGTON CENTER GARAGE &****Co-Owner: SERVICE CORP****Mailing Address:****438 MASS AVE SUITE 127****ARLINGTON, MA 02474**

Prop ID: 57.B-1-1**Prop Location: 9 RYDER ST UNIT 1 Arlington, MA****Owner: TZOVARAS GREGORIOS/ TRUSTEE****Co-Owner: GREGORIOS TZOVARAS TRUST****Mailing Address:****3 THOMAS STREET****WOBURN, MA 01801**

Prop ID: 57.B-1-10**Prop Location: 9 RYDER ST UNIT 10 Arlington, MA****Owner: HAMPTON SHELDON****Co-Owner:****Mailing Address:****9 RYDER STREET #10****ARLINGTON, MA 02476**

Prop ID: 57.B-1-11**Prop Location: 9 RYDER ST UNIT 11 Arlington, MA****Owner: HAN XIAOGANG****Co-Owner: DONG JENNIFER****Mailing Address:****508 LOWELL ST****LEXINGTON, MA 02420**

Prop ID: 57.B-1-12**Prop Location: 9 RYDER ST UNIT 12 Arlington, MA****Owner: AGUILAR LUZ G****Co-Owner:****Mailing Address:****9 RYDER ST UNIT 12****ARLINGTON, MA 02476**

Prop ID: 57.B-1-13**Prop Location: 9 RYDER ST UNIT 13 Arlington, MA****Owner: WINNIG-GIULIANO MICHAEL R****Co-Owner:****Mailing Address:****10 WOODLAND ST****NATICK, MA 01760**

Prop ID: 57.B-1-14**Prop Location: 9 RYDER ST UNIT 14 Arlington, MA****Owner: GILMARTIN WILLIAM T****Co-Owner:****Mailing Address:****9 RYDER ST #14****ARLINGTON, MA 02476**

Prop ID: 57.B-1-15**Prop Location: 9 RYDER ST UNIT 15 Arlington, MA****Owner: RYDER STREET LLC****Co-Owner:****Mailing Address:****46 COLUMBIA RD****ARLINGTON, MA 02474**

Prop ID: 57.B-1-16**Prop Location: 9 RYDER ST UNIT 16 Arlington, MA****Owner: JACOB JOAN/TRUSTEE****Co-Owner: 33 REGENT RD TRUST****Mailing Address:****107 CLOCKTOWER DR UNIT 204****WALTHAM, MA 02452**

Prop ID: 57.B-1-17**Prop Location: 9 RYDER ST UNIT 17 Arlington, MA****Owner: CHIN YOLANDA & JENNIFER****Co-Owner:****Mailing Address:****17 PIEDMONT ST****ARLINGTON, MA 02474**

Prop ID: 57.B-1-18**Prop Location: 9 RYDER ST UNIT 18 Arlington, MA****Owner: FALLAVOLLITA ROBERT P &****Co-Owner: PETITTO CATERINA & ANGLEA E****Mailing Address:****9 RYDER ST #18****ARLINGTON, MA 02474**

Prop ID: 57.B-1-19**Prop Location: 9 RYDER ST UNIT 19 Arlington, MA****Owner: BALIJEPALLI SURYA****Co-Owner:****Mailing Address:****568 NORTH RD****SUDBURY, MA 01776**

Prop ID: 57.B-1-2**Prop Location: 9 RYDER ST UNIT 2 Arlington, MA****Owner: CASEY TERESAE C****Co-Owner:****Mailing Address:****15 MARKET STREET****BILLERICA, MA 01821**

Prop ID: 57.B-1-20**Prop Location: 9 RYDER ST UNIT 20 Arlington, MA****Owner: RAFI SHOWKAT A****Co-Owner:****Mailing Address:****PO BOX 1134****BURLINGTON, MA 01803**

Prop ID: 57.B-1-21**Prop Location: 9 RYDER ST UNIT 21 Arlington, MA****Owner: CHIN RUSSELL****Co-Owner:****Mailing Address:****17 PEARL STREET****LEXINGTON, MA 02420**

Prop ID: 57.B-1-22**Prop Location: 9 RYDER ST UNIT 22 Arlington, MA****Owner: OWEN GERALDINE M ETAL/TRUSTEES****Co-Owner: EDWARD R OWEN FAMILY TRUST****Mailing Address:****9 RYDER ST #22****ARLINGTON, MA 02476**

Prop ID: 57.B-1-23
Prop Location: 9 RYDER ST UNIT 23 Arlington, MA
Owner: KIM JIN W & SUNGJA Y
Co-Owner:
Mailing Address:
1 BLANCHARD RD
CAMBRIDGE, MA 02138

Prop ID: 57.B-1-24
Prop Location: 9 RYDER ST UNIT 24 Arlington, MA
Owner: CHHIM BETHANY K
Co-Owner:
Mailing Address:
9 RYDER ST UNIT 24
ARLINGTON, MA 02474

Prop ID: 57.B-1-3
Prop Location: 9 RYDER ST UNIT 3 Arlington, MA
Owner: BUTTERS ARLENE
Co-Owner:
Mailing Address:
9 RYDER STREET--UNIT 3
ARLINGTON, MA 02476

Prop ID: 57.B-1-5
Prop Location: 9 RYDER ST UNIT 5 Arlington, MA
Owner: DOTALO CAROL A
Co-Owner:
Mailing Address:
9 RYDER STREET #5
ARLINGTON, MA 02476

Prop ID: 57.B-1-6
Prop Location: 9 RYDER ST UNIT 6 Arlington, MA
Owner: YANG JIQIN/LUO GUOYING
Co-Owner: TRS/THE YANG AND LUO TRUST
Mailing Address:
21 HERITAGE DRIVE
LEXINGTON, MA 02420

Prop ID: 57.B-1-7
Prop Location: 9 RYDER ST UNIT 7 Arlington, MA
Owner: OLIVER JEFFREY F & HOLLY H
Co-Owner:
Mailing Address:
40 BURNHAM RD
WINDHAM, NH 03087

Prop ID: 57.B-1-8
Prop Location: 9 RYDER ST UNIT 8 Arlington, MA
Owner: GRAZIANO GERALD J
Co-Owner:
Mailing Address:
59 THESDA STREET
ARLINGTON, MA 02474

Prop ID: 57.B-1-9
Prop Location: 9 RYDER ST UNIT 9 Arlington, MA
Owner: CHEN JERRY C
Co-Owner:
Mailing Address:
18 DOUGLAS ROAD
LEXINGTON, MA 02420



Office of the
Board of Assessors
Robbins Memorial Town Hall
Arlington, MA 02476
(781) 316-3050
Assessors@town.arlington.ma.us

Abutters List

Date: May 11, 2020

Subject Property Address: 0-LOT RYDER ST Arlington, MA
Subject Property ID: 57-2-15

Search Distance: 100 Feet - Conservation

The Board of Assessors certifies the names and addresses of requested parties in interest, all abutters to a single parcel within 100 feet.

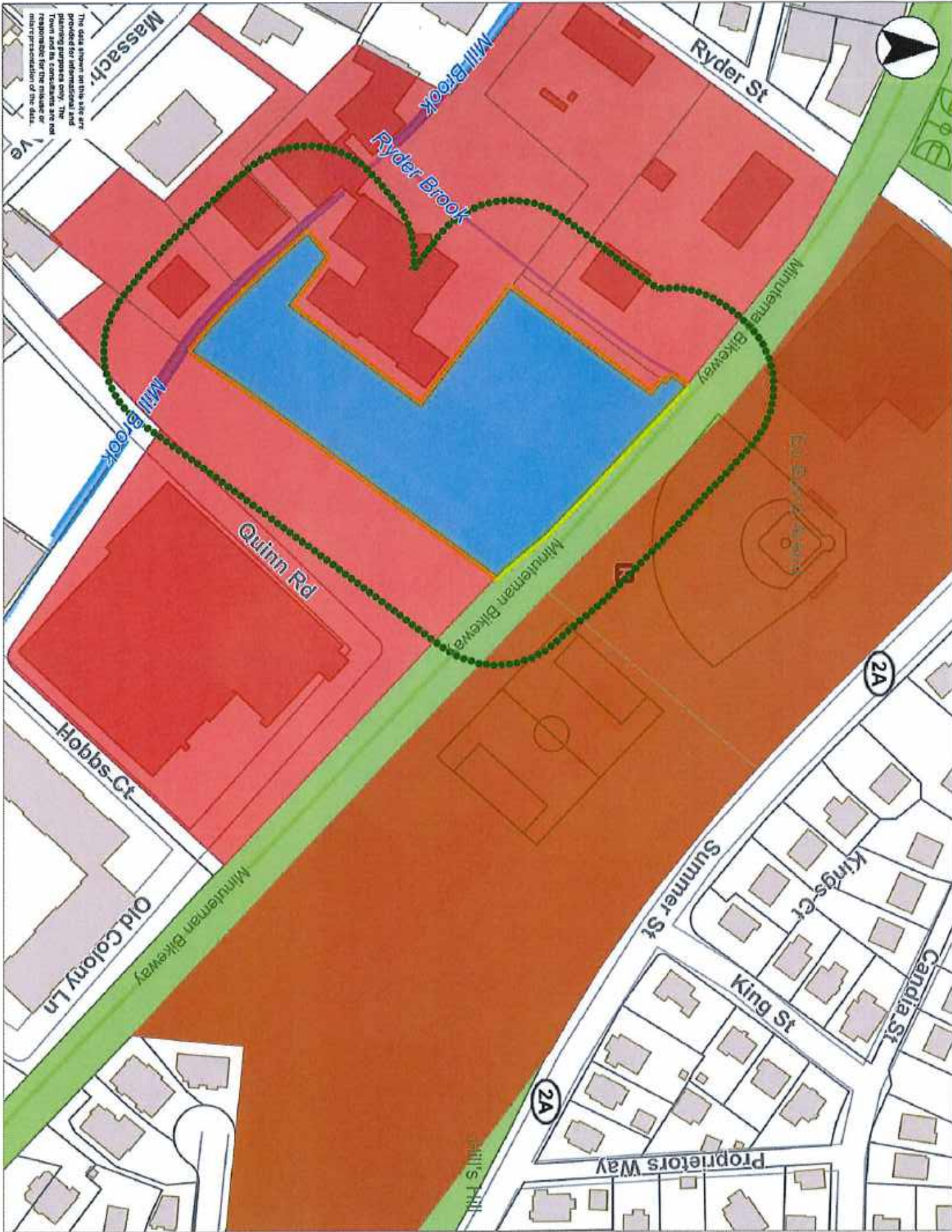
Kenneth L. Feeley
Robert E. Greeley
[Signature]

Board of Assessors



0 200 400 ft

Printed on 05/11/2020 at 02:38 PM



- Places by Category:
- Police Station
 - Fire Station
 - School
 - Laboratory
 - Public Works
 - Recreation - Facilities
 - Recreation - Fields Courts
 - Recreation - Fields Courts
 - Open Space - Conservation
 - Open Space - Minuteman I
 - Open Space - Labels
 - Open Space
 - Open Space - Town, State or Private
 - Open Space - Other Town Owned
 - MA Highways
 - Interstate
 - US Highway
 - Numbered Routes
 - Abutting Towns
 - Town Boundary
 - Private
 - Buildings
 - Campery - Roads
 - Road2
 - Road3
 - Road4
 - Road5
 - Pavement Markings
 - Impermeable Surface - For B
 - Street
 - Sidewalk
 - Driveway
 - Street Island
 - Gravel Lot
 - Gravel Path
 - Roads - For Large Scale (S)
 - Roads - For Small Scale (H)
 - Major Road
 - Local Road
 - Master Plan Base Map - M
 - Water Line
 - Water Body



65-169

Abutters List

Date: May 11, 2020

Subject Property Address: 0-LOT RYDER ST Arlington, MA

Subject Property ID: 57-2-15

Search Distance: 100 Feet

Prop ID: 56-3-1

Prop Location: 26 HOBBS CT Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 56-3-2

Prop Location: 1125-R MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-10.B

Prop Location: 1165-1167 MASS AVE Arlington, MA

Owner: ARLINGTON CENTER GARAGE &

Co-Owner: SERVICE CORP

Mailing Address:

438 MASS AVENUE SUITE 127

ARLINGTON, MA 02474

Prop ID: 57-2-11

Prop Location: 15 RYDER ST Arlington, MA

Owner: LALICATA REALTY LLC

Co-Owner:

Mailing Address:

15 RYDER ST

ARLINGTON, MA 02476

Prop ID: 57-2-11.B

Prop Location: 33 RYDER ST Arlington, MA

Owner: TOWN OF ARLINGTON PARK

Co-Owner:

Mailing Address:

730 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-15

Prop Location: 0-LOT RYDER ST Arlington, MA

Owner:

Co-Owner:

Mailing Address:

YUKON REALTY LLC

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-15.C

Prop Location: 0-LOT RYDER ST Arlington, MA

Owner: MIRAK TRUCK CENTER LLC

Co-Owner:

Mailing Address:

1151 R MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-16.A

Prop Location: 1155-R MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-16.B

Prop Location: 1151-R MASS AVE Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 57-2-19

Prop Location: 0-LOT QUINN RD Arlington, MA

Owner: YUKON REALTY LLC

Co-Owner:

Mailing Address:

1125 MASS AVE

ARLINGTON, MA 02476

Prop ID: 80-5-2.A

Prop Location: 0-LOT SUMMER ST Arlington, MA

Owner: TOWN OF ARLINGTON PARK

Co-Owner: PLAYGROUND

Mailing Address:

730 MASS AVE

ARLINGTON, MA 02476

Prop ID: 81-5-1.B

Prop Location: 424 SUMMER ST Arlington, MA

Owner: DEPT/CONSERVATION & RECREATION

Co-Owner: URBAN PARKS & REC. DIV

Mailing Address:

20 SOMMERSET

BOSTON, MA 02108

Abutter Notification

Notification to Abutters Under the Massachusetts Wetlands Protection Act

In accordance with the second paragraph of Massachusetts General Laws Chapter 131, Section 40, you are hereby notified of the following:

The Conservation Commission will hold a virtual public meeting using Zoom, on Thursday, September 3, 2020, at 7:45pm in accordance with the provisions of the Mass. Wetlands Protection Act (M.G.L. Ch. 131, s. 40, as amended), and in accordance with the Governor's Order Suspending Certain Provisions of the Open Meeting Law, G. L. c. 30A, § 20 relating to the COVID-19 emergency, for a Request for Determination of Applicability from 1165R Mass Ave Property, LLC, for a determination of whether areas indicated on the submitted plan are subject to the jurisdiction of the Wetlands Protection Act at 1165-1167 Massachusetts Avenue within 100 feet of Mill Brook and Ryder Brook and associated Riverfront Area and floodplain, on Assessor's Properties 57-2-10.B and 57-2-15. The Zoom access information for the meeting is below. Please refer to the Commission's online meeting agenda for specific meeting material.

Join Zoom Meeting

<https://town-arlington-ma-us.zoom.us/j/91270261660>

Meeting ID: **912 7026 1660**

Password: **386758**

Call-in: **+1 646 876 9923**

+1 301 715 8592

Meeting number: **912 7026 1660#**

A copy of the application and accompanying plans are available by request by contacting the Arlington Conservation Agent at 781-316-3012 or esullivan@town.arlington.ma.us. For more information call the applicant's representative Goddard Consulting at 508-393-3784 or the Arlington Conservation Commission at 781-316-3012, or the DEP Northeast Regional Office at 978-694-3200.

NOTE: Notice of the Public Hearing will be published at least five (5) business days in advance in *The Arlington Advocate* and will also be posted at least 48 hours in advance in the Arlington Town Hall.

The meeting information for your hearing is:

Date: Thursday, September 3, 2020

Time: 7:45pm

Affidavit of Service

(Please return to Conservation Commission)

I, Dan Wells, being duly sworn, do hereby state as follows: on August 20, 2020, I mailed a "Notification to Abutters" in compliance with the second paragraph of Massachusetts General Laws, Chapter 131, s.40, the DEP Guide to Abutter Notification dated April 8, 1994, and the Arlington Wetlands Protection Bylaw, Title V, Article 8 of the Town of Arlington Bylaws in connection with the following matter:

Request for Determination of Applicability
1165-1167 Mass Ave. & 0 Ryder Street - Arlington, MA

The form of the notification, and a list of the abutters to whom it was provided and their addresses, are attached to this Affidavit of Service.

Signed under the pains and penalties of perjury, this 20th day of August 2020



Name



A graphic scale bar with markings at 0, 5, 10, and 20 feet. Below the bar, it states 1" = 20'.

ORG. DATE - 08/07/2020